Abbreviation of
Principles of Islamic Jurisprudence

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Contents

Preface

I. Apart from the fact that the existing works on Islamic Jurisprudence in the English language do not offer an exclusive treatment of usul al-fiqh, there is also a need to pay greater attention to the source materials, namely the Qur'an and sunnah, in the study of this science. In the English works, the doctrines of usul al-fiqh are often discussed in relative isolation from the authorities in which they are founded. Furthermore, these works tend to exhibit a certain difference of style and perspective when they are compared to the Arabic works on the subject.

II. The usul al-fiqh as a whole and all of the various other branches of the Shari'ah bear testimony to the recognition, as the most authoritative influence and source, of divine revelation (wahy) over and above that of rationality and man-made legislation. This aspect of Islamic law is generally acknowledged, and yet the relevance of wahy to the detailed formulations of Islamic law is not highlighted in the English works in the same way as one would expect to find in the works of Arabic origin. I have therefore made an attempt to convey not only the contents of usul al-fiqh as I found them in Arabic sources but also the tone and spirit of the source materials which I have consulted.

III. I have given frequent illustrations from the Qur'an, the Sunnah and the well recognized works of authority to substantiate the theoretical exposition of ideas and doctrines. The works of the madhahib, in other words, are treated in conjunction with the authority in which they are founded.

IV. The idea to write this book occurred to me in early 1980 when I was teaching this subject to postgraduate students at the Institute of Islamic Studies at McGill University in Montreal. But it was only after 1985 when I started a

teaching post at the International Islamic University, Selangor, Malaysia, that I was able to write the work I had intended.

Works of Arabic origin on usul al-fiqh:

There is a selection of textbooks in Arabic, both classical and modern, at present available on this subject, ranging from the fairly concise to the more elaborate.

Modern Works:

- 'Abd al-Wahhab Khallaf's 'Ilm Usul al-Fiqh
- Abu Zahrah's Usul al-Fiqh
- Muhammad al-Khudari's Usul al-Fiqh
- Badran's Usul al-Fiqh al-lslami
- are some of the well-known works in the field.
- Classical works:
- I have relied on:
- Al-Ghazali's Al- Mustasfa min 'llm al-usul
- Al-Amidi's Al-Ihkam fi Usul al-Ahkam
- Al-Shatibi's Al-Muwafaqat fi Usul al-Ahkam and
- Al-Shawkani's Irshad al-Fuhul fi Tahqiq al-Haqq min 'llm al-Usul.

[Tarikh al-Tashri]

There are several Arabic works of modern origin currently available on the history of jurisprudence and its various phases of development, namely the Prophetic period, the era of the Companions, the early schools of law in the Hijaz and Iraq, the emergence of the madhahib, the era of imitation (taqlid), and the call for a return to ijtihad. This discipline is generally known as 'tarikh altashri' which, as the title suggests, is primarily concerned with the history of juristic thought and institutions. [Note for example al-Khudari's, Tarikh al-Tashri' al-lslami; al-Sabuni et al., Al- Madkhal al-Fiqhi wa Tarikh al-Tashri

al-Islami; al-Qattan's Al-Tashri' wa al-Fiqh fi al-Islam: Tarikhan wa Manhajan, and al-Nabhan's Al-Madkhal li al-Tashri' al-islami. Nish'atuh, Adwaruh al-Tarikhiyyah, Mustaqbalub. For full publication data see my Bibliography.]

The Arabic texts on usul al-fiqh itself are on the whole devoted to a treatment of the sources, and methodology of the law, and tend to leave out its history of development. The reverse of this is true with regard to works that are currently available on the general subject of Islamic jurisprudence in the English language.

Works of Western authorship on this subject are, broadly speaking, primarily concerned with the history of jurisprudence, whereas the juridical subject matter of usul al-fiqh does not receive the same level of attention as is given to its historical development.

Bearing in mind the nature of the existing English literature on the subject, the present work does not attempt to address the historical developments and instead focuses on usul al-fiqh itself.

[Old and New Works on Usool]

As for substantive matters, the modern works are normally expected to preserve the continuity of the earlier authorities, and the two are basically indistinguishable in this regard. Having said this, one might add further that the modern works tend to differ from their predecessors in one other respect, namely that the former tend to offer a more even-handed treatment of the views and doctrines of such schools of thought as the Mu'tazilah, the Shi'ah and the Zahiriyyah, etc.,[1] and tend to treat ideas on merit rather than their formal

[1] The Zahiriyyah are generally from Ahl-us-Sunnah, unlike the Shi’ah and Mu’tazilah. There is an agreement of Ahl-us-Sunnah on the invalidity of the positions of other sects, such as the Shi’ah and

acceptance and recognition by the established madhahib. In addition to the textbook materials on usul al-fiqh, a number of legal encyclopedias have emerged in recent decades in Egypt and elsewhere, usually bearing the title al-Mawsu'ah al-Fiqhiyyah' with the express purpose of offering a balanced treatment of the views and contributions of all the prominent schools of law. As a result, the relatively stronger orientation toward particular schools that is noticeable in the earlier works on usul al-fiqh, especially those that were authored after the crystallisation of the madhahib, is not a prominent feature of the modern works. A more open attitude has in fact emerged which seeks to move away from the sectarian bias that can be found in some earlier works, and it is no longer unusual for a Sunni scholar to write on Shi'i thought, scholars and institutions, with a view to highlighting their contributions to Islamic law and jurisprudence.

The present writer welcomes this development, but if his own work fails to offer adequate coverage of the doctrines of the various schools, it is due solely to considerations of brevity and space which may be expected of a handbook of this size.

[Islamic & Western Jurisprudence.]

III. It is perhaps true to say that Islamic jurisprudence exhibits greater stability and continuity of values, thought and institutions when compared to

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Mu'tazilah. The earlier scholars mentioned their positions and refuted them. However, they were always fair to the opponents. They were correct, since there is no room for the reconciliation of positions with the fact that the sources of Ahl-us-Sunnah and the Shi'ah are different. They don't recognize al-Bukhari, and we don't recognize al-Kafi. They also don't recognize the credibility of the Companions, an integral part in our religious ideology, upon which much of our juridical methodology is founded.

Western jurisprudence. This could perhaps be partially explained by reference to the respective sources of law in the two legal systems. Whereas rationality, custom, judicial precedent, morality and religion constitute the basic sources of Western law, the last two acquire greater prominence in Islamic Law.

Notwithstanding the fact that human reason always played an important role in the development of Shari'ah through the medium of ijtihad, the Shari’ah itself is primarily founded in divine revelation.

A certain measure of fluidity and overlap with other disciplines such as philosophy and sociology is perhaps true of both Islamic and Western jurisprudence. But it is the latter which exhibits the greater measure of uncertainty over its scope and content. Thus according to one observer, books that bear the title 'jurisprudence' vary widely in subject matter and treatment, because the nature of the subject is such that no distinction of its scope and content can be clearly determined, [Dias, Jurisprudence, p. I.] and in Julius Stone's somewhat dramatic phrase, jurisprudence is described as 'a chaos of approaches to a chaos of topics, chaotically delimited'. [See this and other statements by Bentham, Dicey and Arnold in Curzon, Jurisprudence, p. 13.]

Textbooks on usul al-fiqh almost invariably deal with a range of familiar topics and their contents are on the whole fairly predictable. This is perhaps reflective of the relative stability that the Shari’ah in general and the usul al-fiqh in particular has exhibited through its history of development, almost independently of government and its legislative organs.

This factor has, however, also meant that usul al-fiqh has for the most part been developed by individual jurists who exerted themselves in their private capacity away from the government machinery and involvement in the development of juristic thought. Consequently, usul al-fiqh has to some extent

remained a theoretical discipline and has not been internalized by the legislative machinery of government.

The ulema's disaffection with the government did not encourage the latter's participation and involvement in the development of juristic thought and institutions, and this has to some extent discouraged flexibility and pragmatism in Islamic jurisprudence. Note, for example, the doctrinal requirements of ijma', especially the universal consensus of the entire body of the mujtahidun of the Muslim community that is required for its conclusion, a condition which does not concede to considerations of feasibility and convenience. There is also no recognition whatsoever of any role for the government in the doctrine of ijma' as a whole.

One might, for example, know about qiyas and maslahah, etc., and the conditions which must be fulfilled for their valid operation. But the benefit of having such knowledge would be severely limited if neither the jurist nor the judge had a recognized role or power to apply it.

One might add here also the point that no quick solutions are expected to the problem over the application of the Shari'ah in modern jurisdictions. The issue is a long- standing one and is likely to continue over a period of time.

It would appear that a combination of factors would need to be simultaneously at work to facilitate the necessary solutions to the problem under discussion. One such factor is the realization of a degree of consensus and cooperation between the various sectors of society, including the ulama and the government, and the willingness of the latter, to take the necessary steps to bring internal harmony to its laws.

To merge and to unify the Shari'ah and modern law into an organic unity would hopefully mean that the duality and the internal tension between the two divergent systems of law could gradually be minimized and removed.

The Muslim jurist is being criticized for having lost contact with the changing conditions of contemporary life in that he has been unable to relate the resources of Shari'ah to modern government processes in the fields of legislation and judicial practice. A part of the same criticism is also leveled against the government in Islamic countries in that it has failed to internalize the usul al-fiqh in its legislative practices.

The alleged closure of the door of ijtihad is one of the factors which is held accountable for the gap that has developed between the law and its sources on the one hand and the changing conditions of society on the other.

Apart from circumventing the traditional role of the jurist/mujtahid, the self-contained statutory code and the formal procedures that are laid down for its ratification have eroded the incentive to his effective participation in legislative construction. Furthermore, the wholesale importation of foreign legal concepts and institutions to Islamic countries and the uneasy combinations that this has brought about in legal education and judicial practice are among the sources of general discontent.

These and many other factors are in turn accountable for the Islamic revivalism/resurgence which many Muslim societies are currently experiencing.

Ijtihad is wajib kafa'i, a collective obligation of the Muslim community and its scholars to exert themselves in order to find solutions to new problems and to provide the necessary guidance in matters of law and religion. But even so, to make an error in ijtihad is not only tolerated but is worthy of reward given the sincerity and earnestness of the mujtahid who attempts it.

To regulate ijtihad is indeed the primary objective of usul al-fiqh and of whatever it has to teach regarding the sources of law and the methods of interpretation and deduction.

With regard to the translation of technical Arabic terms, I have to some extent followed the existing works, especially Abdur Rahim's Principles of Muhammadan Jurisprudence. But in the absence of any precedent, or when I was able to find a better alternative, I have improvised the equivalent English terms myself.

Most of the Arabic terms are easily convertible into English without engaging in technicalities, but there are occasions where this is not the case, and at times the choice of terms is determined on grounds of consistency and style rather than semantic accuracy.

A measure of technicality and arbitrariness in the choice of terms is perhaps inevitable in dealing with certain topics of usul al-fiqh such as the classification of words and the rules of interpretation. On such occasions, I thought it helpful not to isolate the English terms from their Arabic originals. I have therefore repeated the Arabic terms frequently enough to relate them to their English equivalents in the text. But when the reader is not sure of the meaning of technical terms a look t the glossary, which appears at the end of the text might prove useful.

The translation of the Qur'anic passages which occur in the text is generally based on Abdullah Yusuf Ali's translation of the Holy Qur'an. On occasion, however, I have substituted elements in this translation for easier and more simplified alternatives.

My transliteration of Arabic words is essentially the same as that of the Encyclopedia of Islam (New Edition), with two exceptions, which have become standard practice: q for k and j for dj.

Chapter One: Introduction to Usul al-Fiqh

[Definition and Scope Usul al-fiqh][2]

[2] The Science of Usool al-Fiqh is about the method by which rules are deduced from indications (evidences), so imagine a man thinking of a way to pick a fruit from a tree! The man is the mujtahid; the tree is the source/ evidence; the fruit is the hukm (ruling) and the method of picking is the procedure of deduction.

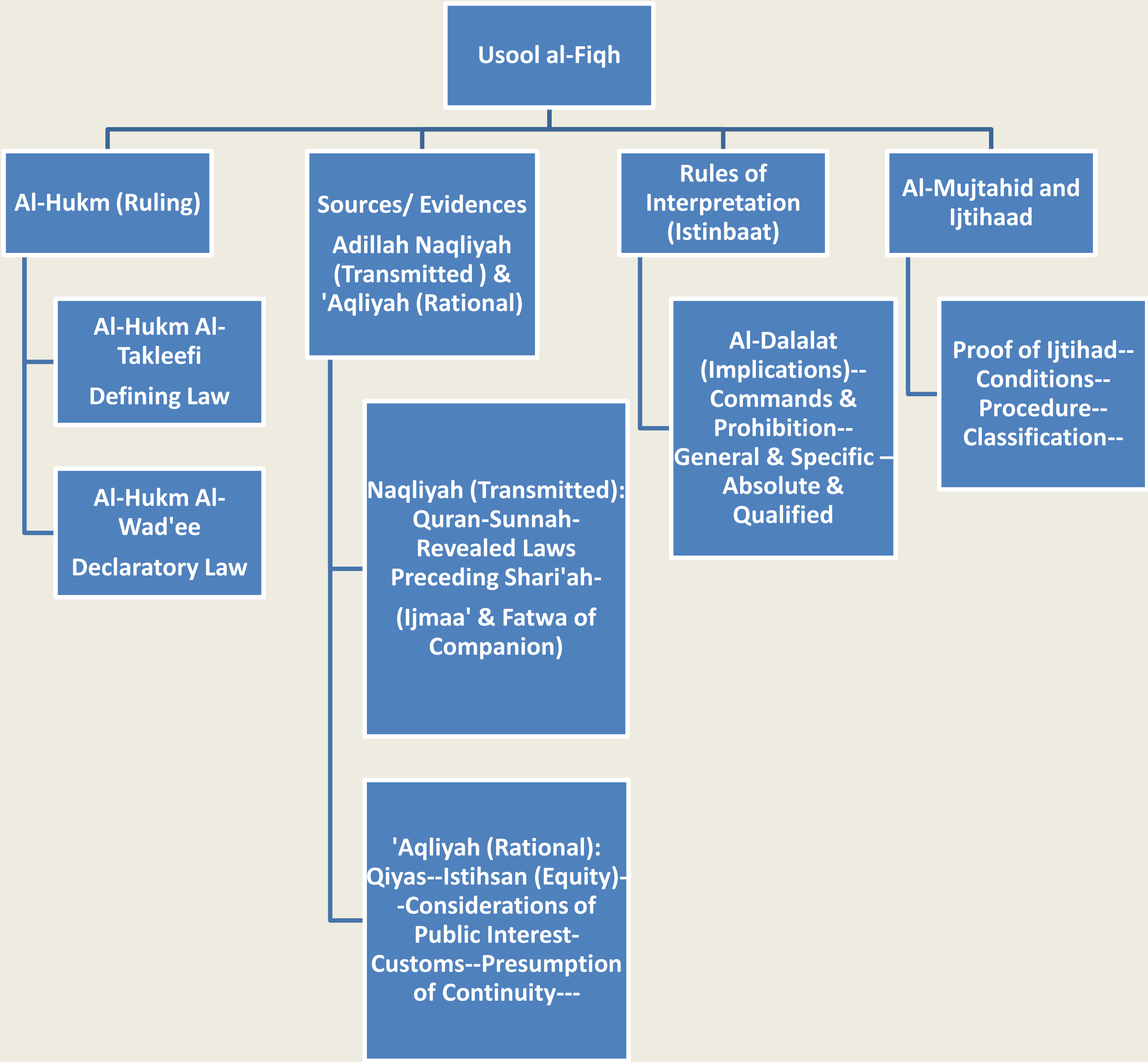
1- The Rules (Fruit)

2- The Sources (Tree)

3- The Rules of Interpretation (Istinbaat)/ Implications (Dalalaat) (Method of Picking)

4- The Interpreter (al-Mujtahid) and His Work (Ijtihaad) (Man)

Definition and Scope Usul al-fiqh, or the roots of Islamic law, expound the indications and methods by which the rules of fiqh are deduced from their sources.



These indications are found mainly in the Qur'an and Sunnah, which are the principal sources of the Shari'ah.

The rules of fiqh are thus derived from the Qur'an and Sunnah in conformity with a body of principles and methods which are collectively known as usul al-fiqh.

The methodology of usul al-fiqh really refers to methods of reasoning such as analogy (qiyas), juristic preference (istihsan), presumption of continuity (istishab) and the rules of interpretation and deduction.

To deduce the rules of fiqh from the indications that are provided in the sources is the expressed purpose of usul al-fiqh. Fiqh as such is the end product of usul al-fiqh; and yet the two are separate disciplines.

Fiqh, in other words, is the law itself whereas usul al-fiqh is the methodology of the law. The relationship between the two disciplines resembles that of the rules of grammar to a language, or of logic (mantiq) to philosophy.

The definition of fiqh is

'knowledge of the practical rules of Shari'ah acquired from the detailed evidence in the sources'. [Amidi, Ihkam, I, 6; Shawkani, Irshad, P. 3.] The knowledge of the rules of fiqh, in other words, must be acquired directly from the sources, a requirement which implies that the faqih must be in contact with the sources of fiqh. Consequently a person who learns the fiqh in isolation from its sources is not a faqih. [Cf. Abu Zahrah, Usul, p. 6]

The faqih must know not only the rule that misappropriating the property of others is forbidden but also the detailed evidence for it in the source, that is, the Qur'anic ayah (2:188) which provides: 'Devour not each other's property in defiance of the law.'

The founder of usul al-fiqh

To what extent is it justified to say that al-Shafi'i was the founder of usul al-fiqh? One theory has it that usul al-fiqh has existed for as long as the fiqh has been known to exist. For fiqh could not have come into being in the absence of its sources, and of methods with which to utilize the source materials. [Cf. Abu Zahrah, Usul p. 8ff.]

Numerous examples could be cited to explain how in early Islam, the Companions deduced the rules of fiqh from their sources.

Even before al-Shafi'i, we know that Abu Hanifah resorted to the use of analogy and istihsan while lmam Malik is known for his doctrine of the Madinese ijma', subjects to which we shall have occasion to return.

But it was through the works of al-Shafi'i, that usul al-fiqh was articulated into a coherent body of knowledge. He devoted his Risalah exclusively to this subject.

When the Prophet was alive, the necessary guidance and solutions to problems were obtained either through divine revelation, or his direct ruling. Similarly, during the period following the demise of the Prophet, the Companions remained in close contact with the teachings of the Prophet and their decisions were mainly inspired by his precedent. Their proximity to the source and intimate knowledge of the events provided them with the authority to rule on practical problems without there being a pressing need for methodology. [Khallaf, 'Ilm, p. 16; Abu Zahrah, Usul, pp. 16-17]

The need for the methodology of usul al-fiqh became prominent when unqualified persons attempted to carry out ijtihad, and the risk of error and confusion in the development of Shari'ah became a source of anxiety for the ulema.

AlShafi'i came on the scene when juristic controversy had become prevalent between the jurists of Madinah and Iraq, respectively known as Ahl al-Hadeeth and Ahl al-Ra'y. This was also a time when the ulama of Hadeeth had succeeded in their efforts to collect and document the Hadeeth.

And finally among the factors which prompted al-Shafi'i into refining the legal theory of usul al-fiqh was the extensive influx of non-Arabs into Islamic territories.

The Shi'i ulama claimed that their fifth Imam, Muhammad al-Baqir, and his son, Ja'far al-Sadiq, were the first to write on the subject of usul. According to Abu Zahrah, who has written extensively on their lives, the Shi'i Imams have written on the subject, but neither of the two have written anything like al-Risalah.

The basic outline of the four principal sources of the law that al-Shafi'i spelled out was subsequently accepted by the generality of ulema, although each school contributed towards its further development.

The Hanafis, for example, added istihsan, and custom ('urf) to the usul al-fiqh, and the Malikis reduced the concept of consensus (ijma') to the Madinese consensus only.

None departed significantly from the basic principles which al-Shafi'i had articulated. [Badran, Usul, P. 14.] Broadly speaking, the era of imitation (taqlid) might have added to the prominence of usul al-fiqh. Imitators relied on the methodology of usul as a yardstick of validity for arguments. [Badran, Usul, P. 14.]

[The Difference Between the Usul, and the Maxims of Fiqh(alqawa'id al-fiqhiyyah)]

The maxims of fiqh refer to a body of abstract rules which are derived from the detailed study of the fiqh itself. They consist of theoretical guidelines in the different areas of fiqh such as evidence, transactions, matrimonial law', etc.[3] As such they are an integral part of fiqh and are totally separate from usul al-fiqh.

Over 200 legal maxims have been collected and compiled in works known as al-ashbah wa al-naza'ir; [authored by Jalal al-Din al-Suyuti and Ibn Nujaym al-Hanafi respectively.] one hundred of these, have been adopted in the introductory section (i.e. the first 100 articles) of the Ottoman Majallah.

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[3] The major legal maxims apply to fiqh universally.

The name 'al-qawa'id al-fiqhiyyah' may resemble the expression usul al-fiqh, but the former is not a part of the latter and the two are totally different from one another.[4]

A comparison between usul al-fiqh and usul al-qanun will indicate that these two disciplines have much in common with one another, although they are different in other respects. They resemble one another in that both are concerned with the methodology of the law and the rules of deduction and interpretation; they are not concerned with the detailed rules of the law itself.

Although the general objectives of usul al-fiqh and usul al-qanun [Principles of Secular Law] are similar, the former is mainly concerned with the Qur'an, Sunnah, consensus, and analogy. The sources of Shari'ah are, on the whole, well-defined and almost exclusive in the sense that a rule of law or a hukm shar'i may not be originated outside the general scope of its authoritative sources on grounds, for example, of rationality (aql) alone. For 'aql is not an independent source of law in Islam. Usul al-fiqh is thus founded in divine ordinances and the acknowledgement of God's authority over the conduct of man.

The sources of Shari'ah may not be overruled on grounds of either rationality or the requirement of social conditions. There is, admittedly, a measure of flexibility in usul al-fiqh which allows for necessary adjustments in the law to accommodate social change.

The legislative organ of an Islamic state cannot abrogate the Qur'an or the Sunnah, although it may abrogate a law which is based on maslahah or istihsan, etc.

Sovereignty in Islam is the prerogative of Almighty God alone. He is the absolute arbiter of values and it is His will that determines good and evil, right and wrong. The

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[4] The maxims are about the recognition of patterns in fiqh through the comprehensive and deductive reading of its entirety. For example, the jurist will realize that, in all topics of fiqh, certainty is not negated by doubt, and hardship results in the making of concessions.

sovereignty of the people, if the use of the word 'sovereignty' is at all appropriate, is a delegated, or executive sovereignty (sultan tanfidhi) only. [Cf. Zaydan, al-Fard wa al-Dawlah, p. 29.]

Although the ,consensus or ijma' of the community, or of its learned members, is a recognized source of law in Islam, in the final analysis, ijma' is subservient to divine revelation and can never overrule the explicit injunctions of the Qur'an and Sunnah.

Islamic jurisprudence is not confined to commands and prohibitions, and far less to commands which originate in a court of law. Its scope is much wider, as it is concerned not only with what a man must do or must not do, but also with what he ought to do or ought not to do, and the much larger area where his decision to do or to avoid doing something is his own prerogative.

Two Approaches to the Study of Usul al-fiqh

Theoretical and Deductive.

The main difference between these approaches is one of orientation rather than substance whereas the former is primarily concerned with the exposition of theoretical doctrines, the latter is pragmatic in the sense that theory is formulated in light of its application to relevant issues.

The difference between the two approaches resembles the work of a legal draftsman when it is compared to the work of a judge. The former is mainly concerned with the exposition of principles whereas the latter tends to develop a synthesis between the principle and the requirements of a particular case.

The theoretical approach to the study of usul al-fiqh is adopted by the Shafi'i school and the Mutakallimun, that is the ulama of kalam and the Mu'tazilah. The deductive approach is, on the other hand, mainly attributed to the Hanafis.

The Shafi'is and the Mutakallimun are inclined to engage in complex issues of a philosophical character which may or may not contribute to the development of the

practical rules of fiqh, such as the 'ismah of the prophets prior to their prophetic mission, and logical and linguistic matters of remote relevance to the practical rules.

The Hanafis expound the principles of usul in conjunction with fiqh. In short, the theoretical approach tends to envisage usul al-fiqh as an independent discipline to which the fiqh must conform, whereas the deductive approach attempts to relate the usul al-fiqh to the detailed issues of the furu al-fiqh.

When, for example, the Hanafis find a principle of usul to be in conflict with an established principle of fiqh, they are inclined to adjust the theory to the extent that the conflict in question is removed.

Three of the most important works which adopt the theoretical approach to usul al-fiqh are:

1. Al-Mu'tamad fi Usul al-Fiqh by the Mu'tazili scholar, Abu al-Husayn al-Basri (d. 436)
2. Kitab al-Burhan of the Shafi'i scholar, Imam al-Haramayn al-Juwayni (d. 487)
3. Al-Mustasfa of Imam Abu Hamid al-Ghazali (d. 505).

These three works were later summarised by Fakhr al-Din al-Razi (d. 606) in his work entitled Al-Mahsul.

Sayf ul-Din al-Amidi's larger work, Al-Ihkam fi usul al-Ahkam is an annotated summary of the three pioneering works referred to above.

The earliest Hanafi work on usul al-fiqh is Kitab fi al-Usul by Abu al-Hasan al-Karkhi (d. 340) which was followed by Usul al-Jassas of Abu Bakr al-Razi al-Jassas (d. 370).

Fakhr al-Islam al-Bazdawi's (d. 483) well-known work, Usul al-Bazdawi, is also written in conformity with the Hanafi approach to the study of this discipline.

This was followed by an equally outstanding contribution by Shams al-Din al-Sarakhsi (d. 490) bearing the title, Usul al-Sarakhsi.

The next phase is marked by the attempt to combine the two approaches. One work which attempted to combine al-Bazdawi's Usul and al-Amidi's Al-Ihkam was completed by Muzaffar al-Din al-Sa'ati (d. 694) whose title Badi' al-Nizam al-Jami 'Bayn Usul al-Bazdawi wa al-Ihkam is self-explanatory as to the approach the author has taken.

Another work which combined the two was by Sadr al-Shari'ah, 'Abd Allah b. Mas'ud al-Bukhari (d. 747) bearing the title Al-Tawdih, which is, in turn, a summary of Usul al-Bazdawi, Al-Mahsul, and the Mukhtasar al-Muntaha of the Maliki jurist. Abu Umar Uthman b. al-Hajib (d. 646).

Three others:

Jam' al-Jawami of the Shafi'i jurist Taj al-Din al-Subki (d. 771)

Al-Tahrir of Kamal al-Din b. al-Humam al-Hanafi (d. 860)

Musallam al-Thubut of the Hanafi jurist Muhibb al-Din b. 'Abd al-Shakur (d. 1119).

Finally, this list would be deficient without mentioning Abu Ishaq Ibrahim al-Shatibi's Al-Muwafaqat, which is comprehensive and perhaps unique in its attention to the philosophy (hikmah) and the objectives of tashri'.

III. Proofs of Shari'ah (Al-Adillah Al-Shar'iyyah)

The adillah Shar'iyyah, and the ahkam, that is, laws that regulate the conduct of the mukallaf, are the two principal themes of usul al-fiqh.

Literally, dalil means proof, indication or evidence. Technically it is an indication in the sources from which a practical rule of Shari'ah, or a hukm is deduced.

The hukm so obtained may be definitive (qat'i') or it may be speculative (zanni) depending on the nature of the subject, clarity of the text, and the value which it seeks to establish. [Amidi, Ihkam, I. 9; Badran, Usul, P. 46, Hitu, Wajiz, p. 99.]

Adillah Shar'iyyah

Adillah Shar’iyyah refer to four principal proofs, or sources: Qur’an, Sunnah, consensus and analogy.

In one verse, all the principal sources are indicated: 'O you believers! Obey God and obey the Messenger and those of you who are in charge of affairs. If you have a dispute concerning any matter, refer it to God and to the Messenger,'(4: 58-59)

'Obey God' refers to the Qur’an, and 'Obey the Messenger' refers to the Sunnah. Obedience to 'those who are in charge of affairs' is held to be a reference to ijma', and the last portion of the ayah which requires the referral of disputes to God and to the Messenger authorises qiyas. For qiyas is essentially an extension of the injunctions of the Qur’an and Sunnah. Qiyas essentially consists of the discovery of a hukm which is already indicated in the divine sources. [Cf. Badran, Usul, pp. 51-52.]

Some fuqaha' separate between dalil and amarah (lit. sign or allusion) and apply dalil to the evidence which leads to a definitive ruling or positive knowledge ('ilm). Amarah would lead to a speculative ruling. [Amidi, Ihkam, I, 9.] This way, 'dalil' would only apply to the definitive proofs, the Qur’an, Sunnah and ijma'.

[Classification of Proofs]

[Transmitted & Rational]

Proofs of Shari'ah have been further divided into transmitted proofs (adillah naqliyyah) and rational proofs (adillah 'aqliyyah). The authority of the transmitted proofs is independent of their conformity or otherwise with the dictates of reason. However, the authority of the Qur’an, Sunnah and ijma' are independent of any rational justification. To these are added two other transmitted proofs, namely the ruling of the Companions, and the laws revealed prior to the advent of Islam (shara'i man qablana) [Cf. Badran, Usul, PP. 54-55.]

The rational proofs are, on the other hand, founded in reason and need to be rationally justified. They can only be accepted by virtue of their rationality. Qiyas,

istihsan, istislah and istishab are basically all rationalist doctrines although they are in many ways dependent on the transmitted proofs.

Rationality alone is not an independent proof in Islam, which is why the rational proofs cannot be totally separated from the transmitted proofs.

Qiyas, for example, is a rational proof, but it also partakes in the transmitted proofs to the extent that qiyas in order to be valid must be founded on an established hukm of the Qur'an, Sunnah or ijma'. However the issue to which qiyas is applied (i.e. the far') must have a 'illah in common with the original hukm. To establish the commonality of the 'illah in qiyas is largely a matter of opinion and ijtihad.

The Adillah Shar'iyyah are on the whole in harmony with reason. This will be clear from the fact that the Shari'ah in all of its parts is addressed to the mukallaf, that is, the competent person who is in possession of his faculty of reasoning. The Shari'ah as a whole does not impose any obligation that would contradict the requirements of 'aql.

Since the criterion of obligation (taklif) is 'aql, and without it all legal obligations fall to the ground, it would follow that a hukm shar'i which is abhorrent to 'aql[5] is of no consequence. [Amidi, Ihkam, III, 180; Badran, Usul, P. 50]

Mustaqill (independent) and Muqayyad (dependent)

The first three sources of the Shari'ah are each an independent asl, or dalil mustaqill.

Qiyas on the other hand is an asl or dalil muqayyad. Its authority is derived from the independent sources. Why ijma' has been classified as an independent proof ? The answer to this is that ijma' is in need of a sanad in the divine sources for its formulation in the first place. However, once the ijma' is concluded, it is no longer dependent on its sanad. [Amidi, Ihkam, I, 260.]

[Definitive & Speculative]

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[5] That is the Mental Axioms that are not contested by anyone, not the individual reasoning.

The Qur'an, Sunnah and ijma' are definitive proofs in being binding. However each contains speculative rules open to interpretation.

A Dalil may be qat'i in regards to both transmission (riwayah) and meaning (dalalah). Clear injunctions of Qur'an and Hadeeth Mutawatir are qat'i in respect of both.

The Qur'an is all authentic, therefore of proven authenticity (qat'i al-thubut). The solitary, or ahad, Hadeeth is of speculative authenticity and therefore falls under the category of speculative proofs. [Shawkani, Irshad, p. 47]

Similarly, a ruling of ijma' may have reached us by continuous testimony (tawatur) in which case it is (qat'i al-thubut). But when transmitted through solitary reports, it becomes zanni al-thubut. The text of the Qur'an or the Hadeeth may convey a command or a prohibition.

It is in the light of the wording of the text, its subject-matter and other supportive evidence that the precise shar'i value of it can be determined. A command may, in the presence of supportive evidence, imply a recommendation (nadb) or a mere permissibility (ibahah) and not wujub.

Consequently, when the precise value of the qat'i and the zanni on the scale of five values is not self-evident, it is determined by supportive evidence that may be available in the sources or by ijtihad. The qat'i of the Qur'an and Sunnah is not open to interpretation. [Abu Zahrah, Usul, p. 711; Shaltut, Al-IsIam, p. 498.]

Chapter Two: The First Source of Shari'ah: The Qur'an

Being the verbal noun of the root word qara'a (to read), 'Qur'an' literally means 'reading' or 'recitation'.

It may be defined as 'the book containing the speech of God revealed to the Prophet Muhammad in [The Qur'an also calls itself by alternative names, such as Arabic and transmitted to us by continuous testimony, or tawatur'. kitab, huda, furqan, and dhikr (book, guide, distinguisher, and remembrance respectively).

When the definite article, al, is prefixed to the Qur'an, it refers to the whole Book.

It is a proof of the prophecy of Muhammad, the most authoritative guide for Muslims, and the first source of the Shari'ah. The ulama are unanimous on this, and some say it is the only source and all other sources are explanatory to it.

The revelation of the Qur'an began with the Sura al-'Alaq (96:1) starting with the words 'Read in the name of your Lord' and ending with the ayah in sura al-Ma'idah (5:3): 'Today I have perfected your religion for you and completed my favour toward you, and chosen Islam as your religion.[6]

There are 114 suras and 6235 ayat of unequal length in the Qur'an. The shortest of the suras consists of four[7] and the longest of 286 ayat.

Both the order of the ayat within each sura, and the sequence of the suras, were re-arranged and finally determined by the Prophet in the year of his demise. According to this arrangement, the Qur'an begins with al-Fatihah and ends with al-Nas. [Von Denffer, 'Ulum, p. 68ff.]

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[6] Some disagree on this point, saying that the last ayah of the Qur'an was al-Baqarah 2: 281 as follows: 'Fear the day when you will be brought back to God; then every soul will be paid in full according to whatever it has earned, and they will not be treated unjustly.'

[7] The shortest surah is al-Kawthar, and it has three verses only.

The contents of the Qur’an are not classified subject-wise. To give just a few examples, the command concerning salah appears in the second sura, in the midst of other ayat which relate to the subject of divorce (al-Baqarah, 2:228-248). From this a conclusion has been drawn that the Qur’an is an indivisible whole. Any attempt to follow some parts and abandon others will be totally invalid.

The Qur’an consists of manifest revelation (wahy zahir), which is defined as communication from God to the Prophet Muhammad, conveyed by the angel Gabriel, in the very words of God. Internal revelation (wahy batin) consists of inspiration (ilham) of concepts only: God inspired the Prophet and the latter conveyed the concepts in his own words. All the sayings, or aHadeeth, of the Prophets fall under the category of internal revelation.

In the Hadeeth Qudsi, the Prophet narrates a concept directly from God. The Prophet has not distinguished Hadeeth Qudsi from other aHadeeth: it was in fact introduced as a separate category by the ulama at around the fifth century Hijrah. Hadeeth in all varieties consists of divine inspiration communicated in the words of the Prophet. The salah cannot be performed by reciting the Hadeeth, nor is the recitation of Hadeeth considered as of the same spiritual merit as the Qur'an. [Khallaf, ‘Ilm, P. 23; Abu Zahrah, Usul, P. 59.]

[Words of non-Arabic origin]

The Qur’an explicitly states that it is all communicated in pure and clear Arabic (al-Nahl, 16:3o). The ulama are in agreement that words of non-Arabic origin occur in the Qur'an, nevertheless, they are words which were integrated into the language of the Arabs before the revelation of the Qur’an.

To give just a few examples, words such as qistas (scales - occurring in the Sura al-Isra', 17:35), ghassaq (intense cold) in Sura al-Naba' (78:2 5) and sijjil (baked clay - in al-Hijr, 15:74) are of Greek, Turkish and Persian origins respectively. [For an exclusive

treatment of words of foreign origin in the Qur'an see Shawkani, Irshad, p. 22ff. See also Ghazali, Mustasfa, I, 68.]

Since the Qur’an consists of manifest Arabic revelation, a translation is not Qur’an. However, Abu Hanifah has held the view that the Qur’an is name for the meaning only, and salah may be performed in its Persian translation. His disciples disagreed, and it is reported that he reversed this ruling. This is now considered the correct Hanafi position. [The recanting is reported by Nuh b. Maryam. See Aba Zahrah, Usul, p. 60]

[Graduality]

The Prophet and his Companions memorised the Qur’an. This was facilitated by the fact that it was revealed piecemeal over a period of twenty-three years. The Qur’an itself explains the rationale of graduality (tanjim) as follows: 'The unbelievers say, why has not the Qur’an been sent down to him [Muhammad] all at once. Thus [it is revealed] that your hearts may be strengthened, and We rehearse it to you gradually, and well-arranged' [al-Furqan, 23:32]. Elsewhere we read in the text: 'It is a Qur’an We have divided into parts in order that you may recite it to people at intervals: We have revealed it by stages' (Bani Isra'il, 17:106).

Graduality afforded the believers opportunity to reflect over the Quran and retain it. It also allowed continuous contact and renewal of spiritual strength. Furthermore, in view of the widespread illiteracy of the Arabs at the time, had the Qur’an been revealed all at once, they would have found it difficult to understand.

It was revealed piecemeal so as to avoid hardship to the believers in matters which touched their lives. The ban on the consumption of alcohol affords an interesting example of the Qur’anic graduality in legislation. The following Qur’anic passage was revealed as a moral advice: 'They ask you about alcohol and gambling, say: in these there is great harm and also benefit for the people, but their harm far outweighs their benefit' (al-Baqarah; 2:219). Then offering prayers while under the influence of alcohol

was prohibited (al-Nisa', 4:43). Finally a total ban on wine drinking was imposed (al-Ma'idah, 5:93) and both alcohol and gambling were declared to be 'works of the devil.

[Transmission]

The ulama are in agreement that the entire Qur'an is Mutawatir. Hence nothing less than tawatur is accepted to establish the authenticity of the variant readings of the Qur'an. In the context of penance (kaffarah) of a false oath, for example, the reading of 'Abdullah ibn Mas'ud, which is not established by tawatur is not a part of the Qur'an. Standard text provides this to be three days of fasting. But Ibn Mas'ud's version has it as three consecutive days.[8] [Ghazali, Mustafa, I. 64; Shawkani, Irshad, P. 30]

During the lifetime of the Prophet, the text of the Qur'an was preserved not only in memories, but also in inscriptions on such materials as flat stones, wood and bones, which explains why it could not have been compiled in a bound volume. Initially, Abu Bakr, collected it soon after the battle of Yamamah which led to the death of at least seventy of the memorisers. Zayd b. Thabit, the scribe of the Prophet, was employed on this task, which he accomplished between 11 and 14 Hijrah. But several versions and readings of this edition soon crept into use. Hence the third Caliph, 'Uthman, once again utilised the services of Zayd to verify the accuracy of the text and compiled it in a single Volume. All remaining variations were destroyed. [Abu Zahrah, Usul, p. 62; Abdur Rahim, Jurisprudence, P. 71.]

[makki & Madani]

The larger part, that is nineteen out of the total of thirty parts, was received in Mecca. The remainder was received after the Prophet's migration to Madinah over a period of just over nine and a half years. [To be precise, the Meccan period lasted twelve years, five months and thirteen days, and the Madinan period, nine years, seven months and seven days.]

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[8] This would have been an explanatory reading, and its legal value would be controversial.

The Meccan part is mainly devoted to belief. The Madinese part comprised legal rules and regulated the various aspects of life. [Khallaf, 'Ilm, P. 24.]

The knowledge of the Meccan and the Madinese contents gives one insight into the context of revelation and is particularly relevant in the understanding of abrogation (naskh). A sura is considered Makki if its revelation began in Mecca, even if it contained ayat that were revealed in Madinah.

The Qur'an consists of eighty-five Meccan and twenty-nine Madinan suras. The differences of content and style that are observed in each are reflective of the prevailing circumstances of each period.

Since Muslims were in the minority in Mecca the Meccan ayat may thus be especially meaningful to Muslims living in a dominantly un-Islamic environment, whereas the Madinese ayat may take for granted the presence of the sovereign authority of the Islamic state.

The Meccan suras are generally short but rhythmical and intense in their emotional appeal to the pagan Arabs, whereas the Madinan suras are detailed and convey a sense of serenity that marks a difference of style in the revelation of the Qur'an. [Cf. von Denffer, 'Ulum, p. 90.]

The distinction between the Meccan and Madinan parts of the Qur'an is based on the information that is provided mainly by the Companions and the following generation of the 'successors' and the theme itself. Also, the form of address is often different. 'O you who believe' and 'O people of the Book' indicate a Madinan origin, while 'O people' or 'O mankind' are typically Meccan. There are nineteen suras in the Qur'an which begin with abbreviated letters (al-muqatta'at); all of them are known to be Meccan except two, namely al-Baqarah, and Al-Imran. All references to the munafiqun (hyprocrites) are Madinan and all suras that contain sajdah, that is, an order to prostrate, are Meccan.

With regard to distinguishing the Makki from the Madani, the ulama applied three different criteria:

1) The time of the revelation, meaning that the part of the Qur'an which was revealed prior to the Prophet's migration to Madinah is classified as Makki regardless of the locality in which they were received. In this way the ayat which were actually revealed in Mecca after the Year of Victory ('am al-fath) or during the Farewell Pilgrimage (hajjah al-wida) are accounted as Madani. This is most preferred.

2) The place of revelation, which means that all the ayat that were revealed while the Prophet was in Mecca, or its neighbouring areas, are classified as Makki. This leaves out the ayat which received while the Prophet was travelling.

3) The nature of the audience, which means that all passages which begin with phrases such as 'O mankind' or 'O people' are Makki and those which open with phrases, such as 'O believers' are typically Madarni. [Cf. Qattan, Tashri', 69-70.]

The Qur'an calls itself huda, or guidance, not a code of law. Out of over 6,200 ayat, less than one-tenth relate to law. Its ideas of economic and social justice, including its legal Contents, are on the whole Subsidiary to its religious call. The legal or practical contents of the Qur'an (al-ahkam al-'amaliyyah) constitute the basis of what is known as fiqh al-Qur'an, or the Juris corpus of the Qur'an. There are close to 350 legal ayat, most of which were revealed in response to problems encountered. Some aimed at repealing objectionable customs such as infanticide, usury, gambling and unlimited polygamy. Others laid down penalties to enforce the reforms the Qur'an introduced. But on the whole, the Qur'an confirmed and upheld the existing customs and institutions of Arab society and only introduced changes that were deemed necessary.[9] [Cf. Abdur Rahim, Jurisprudence, P. 71.]

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[9] Some of those customs are from the religion of Ibrahim; some are universal human customs; some were specific for the Arabs, but were permissible, so they were not commented on because the

There are an estimated 140 ayat in the Qur'an on devotional matters such as salah, legal alms (zakah), siyam (fasting), the Pilgrimage of hajj, jihad, charities, the taking of oaths and penances (kaffarat).

Another 70 ayat are devoted to marriage, divorce, the waiting period of 'iddah, revocation (rij'ah), dower, maintenance, custody of children, fosterage, paternity, inheritance and bequest.

Rules concerning commercial transactions (mu'amalat) such as sale, lease, loan and mortgage, constitute the subject of another 70 ayat.

There are about 30 ayat on crimes and penalties such as murder, highway robbery (hirabah), adultery and false accusation (qadhf).

Another 30 ayat speak of justice, equality, evidence, consultation, and the rights and obligations of citizens. There are about 10 ayat relating to economic matters regulating relations between the poor and the rich, workers' rights and so on. [Shaltut, Al-Islam, P. 494] The fuqaha are not in agreement over these figures, as calculations of this nature tend to differ according to one's understanding. [Ghazali estimates ayat al-ahkam at 500. While commenting on Ghazali's estimate, Shawkani on the other hand observes that any such calculation can only amount to a rough estimate (Shawkani, Irshad, p. 250)]

Characteristics of Qur'anic Legislation

The Qur'an is quite expressive of the purpose, reason, objective, benefit, reward and advantage of its injunctions since it addresses the conscience with a view to persuade it of the truth. This feature is closely associated with ratiocination (ta'lil).

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defauly is permissibility. Islam didn't incorporate the Arab culture into it. It permits the practice of all cultures, within guidelines it provided for all people of all cultures.

Of all features of Qur'anic legislation, its division into qat'i and zanni is perhaps the most significant, as it relates to almost any aspect of enquiry into its legislation.

The Definitive (qat'i) and the Speculative (zanni)

A definitive text is one which is clear and specific; it has only one meaning and admits of no other interpretations. An example of this is the text on the entitlement of the husband in the estate of his deceased wife, as follows: 'In what your wives leave, your share is a half, if they leave no child" (al-Nisa', 4:12). The quantitative aspects of this ruling is self-evident.

The rulings of the Qur'an on the essentials of the faith such as salah and fasting and the prescribed penalties, are all qat'i and not open to ijtihad.

The speculative ayat of the Qur'an are, on the other hand, open to interpretation and ijtihad. The best interpretation is that which can be obtained from the Qur'an itself by finding elaboration elsewhere. The Sunnah is another source which supplements the Qur'an and interprets its rulings. When the interpretation is found in an authentic Hadeeth, it becomes an integral part of the Qur'an and both carry a binding force. Next in this order comes the Companions, who are particularly well-qualified to interpret the Qur'an in light of their close familiarity with its text, the surrounding circumstances, and the teachings of the Prophet. [Khallaf, 'Ilm, P. 35]

An example of the zanni in the Qur'an is the text which reads, 'Prohibited to you are your mothers and your daughters' (al-Nisa 4:23). The text is definitive in regard to the prohibition of marriage with one's mother and daughter and there is no disagreement on this point. However, the word banatukum ('your daughters') could be taken for its literal meaning, which would be a female child born to a person either through marriage or through zina, or for its juridical meaning, which only means a legitimate daughter.

The Hanafis upheld the first and ruled on the prohibition of marriage to one's illegitimate daughter, whereas the Shafi'is upheld the second. [Sha'ban,'Manhaj', P. 31]

A Qur’anic injunction may simultaneously possess a definitive and a speculative meaning, in which case each of the two meanings will convey a ruling independently of the other. An example of this is the injunction concerning the requirement of ablution for prayers which reads in part ' . . . and wipe your heads' (al-Ma’idah, 5:6). This text is definitive on the requirement of wiping (mash) of the head in wudu', but since it does not specify the precise area of the head to be wiped, it is speculative in regard to this point.

When the ruler authorises a particular interpretation of the Qur’an and enacts it into law, it becomes obligatory for everyone to follow only the authorised version . [Shaltut, Al-Islam, P. 498.]

The zanni component of a command or a prohibition is readily identified by the fact that a command in the Qur’an may amount either to wajib or to mandub or even to a mere mubah. Similarly, it is not always certain whether a prohibition in the Qur’an amounts to a total ban (tahrim) or to a mere abomination (karahah).

[Haqiqi & Majazi]

Although relying on the literal meaning of a word is the norm and a requirement of certainty in the enforcement of a legal text, it may be necessary at times to depart from the literal in favour of adopting the metaphorical meaning of a word'. To give an example, talaq literally means release or setting free, but as a technical term, it has acquired a specific meaning, and it is the metaphorical meaning of talaq which is normally applied. The ulama have identified a large variety of grounds on which the haqiqi and the Majazi can be related to one another. The Majazi is to a large extent speculative and unreal. Some ulama have even equated the Majazi with falsehood, and, as such, it has no place in the Qur'an.

The zanni of the Qur'an may be elevated into qat’i’ by means of corroborative evidence in the Qur’an itself or in the Sunnah. Similarly, the zanni of the Sunnah may be elevated into qat’i’ by means of corroborative evidence in the Sunnah itself or in the

Qur'an. And then the zanni of both the Qur'an and Sunnah may be elevated into qat'i by means of a conclusive ijma', especially of Companions.

To illustrate this, all the solitary (ahad) aHadeeth which elaborate the definitive Qur'anic prohibition of usury (riba) in sura 2:275 are speculative by virtue of being Ahad. But since their substance is supported by the definitive text of the Qur'an, they become definitive despite any doubt that may exist in respect of their authenticity.

Thus as a general rule, all solitary aHadeeth whose authenticity is open to speculation are elevated to the rank of qat'i' if they can be substantiated by clear evidence in the Qur'an. [Shatibi, Muwafaqat, III, 9; Qattan, Tashri', p. 82.]

However, if the zanni cannot be so substantiated by the qat'i', it is not binding unless it can be validated by some evidence which may lead to one of the following two possibilities[10]:

Firstly, the zanni is found to be in conflict with a qat'i of the Qur'an, in which case it must be rejected. To illustrate this, it is reported that the widow of the Prophet, A'ishah, rejected the alleged Hadeeth that the (soul of the) deceased is tortured by the weeping of his relatives over his death, [Shatibi, Muwafaqat, III, 9.] the reason being that this was contrary to the definitive text of the Qur'an (al-An'am, 6:164) which provides that 'no soul may be burdened with the burden of another soul'.[11]

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[10] The disagreement is about the zanni in its implication, not in authenticity. There is a consensus that the solitary ahadeeth are proof in matters of practice. The stronger position is that they are also binding in matters of belief.

[11] This position of 'Aishah (Allah be pleased with her) is counter to many companions, and it is not the correct position. She said it was the kafir, not the believer who may be tormented because of the crying of his folk. However, whether it is a believer or not, the apparent conflict with the verse is not solved. The hadith is authentic, and would be understood to mean that he will feel their pain or that he will be tormented if that is what he wished and encouraged in his life. This way, there would be no conflict with the verse.

And secondly, the speculative indication may be such that it cannot be related to a definitive evidence in any way. The ulama have differed on this; some would advise suspension while others would apply the presumption [Shatibi, Muwafaqat, III, 12.] of permissibility (ibahah), but the best view is that the matter is open to ijtihad.[12]

The qat'i of the Qur'an is an integral part of the dogma, and anyone who rejects or denies its validity automatically renounces Islam. But denying a particular interpretation of the zanni does not amount to transgression.

Brevity and Detail (al-ijmal wa'l-tafsil)

The larger part of the Qur'anic legislation consists of an enunciation of general principles, although in certain areas, the Qur'an also provides specific details. While commenting on this point, Abu Zahrah concurs with Ibn Hazm's assessment that 'every single chapter of fiqh finds its Origin in the Qur'an, which is then explained and elaborated by the Sunnah'. [Abu Zahrah,Usul, p. 80]

The often-quoted declaration that 'We have neglected nothing in the Book' (al-An'am, 6:38) is held to mean that the ru'us al-ahkam, that is, the general of law and religion, are exhaustively treated in the Qur'an. [Abu Zahrah, Usul, P. 70.]

Al-Shatibi further observes that wherever the Qur'an provides specific details it is related to the exposition and better understanding of its general principles. [Shatibi, Muwafaqat, III, 217]

Broadly speaking, the Qur'an is specific on matters which are deemed to be unchangeable, but in matters which are liable to change, it merely lays down general guidelines.

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[12] It is practically impossible to not find any corrobaroative evidence to strengthen one side of the arguemnet. We still work upon what is probable and most likely, because certainty in this life is limited to very few matters. In our own worldly life affairs, if we only work on certainty, we will be utterly timid and ineffective.

With regard to civil transactions, for example, the nusus of the Qur’an on the fulfillment of contracts, the legality of sale, the prohibition of usury, respect for the property of others, the documentation of loans and other forms of deferred payments are all concerned with general principles.

The detailed varieties of lawful trade, the forms of unlawful interference with the property of others, and the varieties of surious transactions, are matters which the Qur’an has not elaborated. Some of these have been explained and elaborated by the Sunnah. As for the rest, it is for the scholars and the mujtahidun of every age to specify them in the light of the general principles of the Shari’ah. [Cf. Badran, Bayan, pp. 2-3]

In the sphere of crimes and penalties, the Qur’anic legislation is specific with regard to only five offences, namely murder, theft, highway robbery, zina and slanderous accusation. As for the rest, the Qur’an authorises the community and those who are in charge of their affairs (i.e. the ulu al-amr) to determine them.

Once again the Qur’an lays down the broad principles of penal law when it provides that 'the punishment of an evil is an evil like it' (al-Shura, 42:40), and 'when you decide to punish then punish in proportion to the offence committed against you' (al-Nahl, 16:126).

In the area of international relations, the Qur’an lays down rules which regulate war with the unbelievers and expound the circumstances in which their property may be possessed. But the general principle on which relations between Muslims and non-Muslims are to be regulated is stated in the following passage: God does not forbid you to act considerately towards those who have never fought you over religion nor evicted you from your homes, nor [does he forbid you] to act fairly towards them. God loves the fair-minded…(al-Mumtahinah, 60:8-9).

On the principles of government, such as consultation, equality and the rights of citizens, the Qur’an does not provide any details. The general principles are laid down,

and it is for the community, the ulama and leaders to organise their government in the light of the changing conditions of society [Sabuni, Madkhal, P. 73.]

The Qur'an itself warns the believers against seeking the regulation of everything by the express terms of divine revelation, as this is likely to lead to rigidity and cumbersome restrictions: 'O you believers, do not keep asking about things which, if they were expounded to you, would become troublesome for you. . .' (5:104).

A careful reading of the Qur'an further reveals that on matters pertaining to belief, the basic principles of morality, man's relationship with his Creator, and what are referred to as ghaybiyyat, that is transcendental matters which are characteristically unchangeable, the Qur'an is clear and detailed.

In the area of ritual performances (ibadat) such as salah, fasting and hajj, the Qur'an is nevertheless brief, and most of the details have been supplied by the Sunnah. An explanation for this is that ritual performances are all of a practical, or 'amali, nature and require clear instructions which are best provided through practical methods and illustration. With regard to salah and hajj, the Prophet has ordered his followers to 'perform them the way he did' [Shatibi, Muwafaqat, III, 178]

The Qur'an also contains detailed rules on family matters, the prohibited degrees of relationship in marriage, inheritance and specific punishments for certain crimes. The basic objectives of the law regarding these matters are permanent. They, however, lead to disputes, so regulating them in detail is to prevent conflict. The Qur'an also took into consideration the prevalence of certain entrenched social customs. The Qur'anic reforms concerning the status of women, and its rules on the just distribution of property within the family could, in view of such customs, only be effective if couched in clear and specific detail. [Badran, Bayan, P. 4.]

Once again the fact that legislation in the Qur'an mainly occurs in brief and general terms has to a large extent determined the nature of the relationship between the Qur'an and Sunnah. Since the general, the ambiguous and the difficult portions of the

Qur'an were in need of elaboration and takhsis (specification), the Prophet was expected to provide the necessary details and determine the particular focus of the general rulings of the Qur'an.

The generality of the Quran allowed the ulama of all times to derive a fresh message, a new lesson or a new principle from the Qur'an that was more suitable to the realities of their times.

To give one example, on the subject of consultation (shura) the Qur'an contains only two ayat, both of which are general. One of these commands the Prophet to 'consult them [the community] in their affairs' (Al-Imran, 3:159) and the other occurs in the form of praise to the Muslim community on account of the fact that 'they conduct their affairs by consultation among them' (Al-Shura, 42:38). The fact that both these are general proclamations has made it possible to relate them to almost any stage of development in the socio-political life of the community. The Qur'an has not specified the manner as to how the principle of shura should be interpreted. These are all left to the discretion of the community. [Cf. Sha'ban, 'Manhaj', p. 29.]

The Five Values As a characteristic feature of Qur'anic legislation

The question as to whether a particular injunction in the Qur'an amounts to a binding command or to a mere recommendation or even permissibility cannot always be determined from the words and sentences of its text. Broadly speaking, when God commands or praises something, or recommends a certain form of conduct, or refers to the positive quality of something, or when it is expressed that God loves such-and-such, or when God identifies something as a cause of bounty and reward, all such expressions are indicative of the legality (mashru'iyyah) of the conduct which partakes in the obligatory and commendable. If the language of the text is inclined on the side of obligation (wujub), such as when there is a definite, demand or a clear emphasis on doing something, the conduct is obligatory (wajib), otherwise it is commendable (mandub).

This style of Qur'anic legislation, and the fact that it leaves room for flexibility in the evaluation of its injunctions, is once again in harmony with the timeless validity of its laws. The Qur'an is not specific on the precise value of its injunctions, and it leaves open the possibility that a command in the Qur'an may sometimes imply an obligation, a recommendation or a mere permissibility.

Only the two extremes, namely the wajib and haram, incorporate legal commands and prohibitions. The rest are largely non-legal and non-justiciable in a court of law.

The Qur'an thus leaves open the possibility, although not without reservations, of enacting into haram what may have been classified by the fuqaha' of one age as merely reprehensible, or makruh if this is deemed to be in the interest of the community in a different stage of its experience and development.[13]

Ratiocination (ta'lil)

Ratiocination (ta'lil) in the Qur'an Literally ta'lil means 'causation'

This refers to the logical relationship between the cause and effect. Broadly speaking, 'illah refers to the rationale of an injunction, and in this sense, it is synonymous with hikmah, that is, the purpose and objective of the law. The differences between 'illah and hikmah will be discussed in the chapter on (qiyas). There is another Arabic word, namely sabab, which is synonymous with 'illah, and the two are often used interchangeably. Yet the ulama of usul tend to use sabab in reference to devotional matters (ibadat) but use 'illah in all other contexts. Thus it is said that the arrival of

[13] The value of the act is a hukm (ruling) that may not be arbitrarily assigned, but upon careful examination of the evidence, it will be decided whether an act is detestable of forbidden. The public interest is incorporated into the process of reasoning, since it is a source of evidence, when it is not in conflict with the revelation.

Ramadan is the cause (sabab) of fasting but that intoxication is the 'illah of the prohibition in wine-drinking[14]. [Cf. Ahmad Hasan, 'Rationality', p. 101.]

The authority of the Qur'an as the principal source of the Shari'ah is basically independent of ratiocination. The believers accept its rulings regardless of being rationally explainable.

However, there are instances where the Qur'an justifies its rulings. To give an example, the believers are enjoined in sura al-Nur (24:30) 'to avert their glances and to guard their private parts'. The text then explains that in doing so they will attain greater chastity of character.

Here, the text explicitly states the 'illah of the injunctions concerned, However, on numerous other occasions the jurists have identified the 'illah through reasoning and ijtihad.

The identification of 'illah in many of the following for example, is based on speculative reasoning on which the ulama are not unanimous: that arrival of the specified time is the cause (sabab or 'illah) of the prayer, that the month of Ramadan is the cause fasting, that theft is the cause of amputation of the hand. These and other similar conclusions with regard to the assignment of 'illah have been drawn in the light of supportive evidence in the Qur'an and Sunnah.

Ta'lil acquires a special significance in the context of analogical deduction. 'Illah is an essential requirement, indeed the sine qua non of analogy.

To enable the extension of an existing rule of the Shari'ah to similar cases, the mujtahid must establish a common 'illah between the original and the new case.

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[14] Notice that the intoxication is a comprehendible cause for the prohibition of wine. The arrival of Ramadan is not rationally different from Shawwal. This is where we submit to the Divine will that made Ramadan different from Shawwal.

To this it may be added that there is a variety of qiyas, known as qiyas mansus al-‘illah, or qiyas whose 'illah is indicated in the nass, in which the 'illah of the law is already identified in the text. When the ‘illah is so identified, there remains no need for the mujtahid to establish the effective cause of the injunction by recourse to reasoning or ijtihad. However, this variety of qiyas is limited in scope when it is compared to qiyas whose 'illah is not so indicated on the nusus. It thus remains true to say that ta'lil, that is, the search to identify the 'effective cause of the shari’ah rules, is of central importance to qiyas. Further discussion on the ‘illah of analogy can be found in our discussion of qiyas in a separate chapter below.

Inimitability (i'jaz) of the Qur’an

This is reflected in at least four aspects of the Qur’an.

First, in its linguistic excellence

Many scholars have pointed out that there exists no piece of literature that can match the literary excellence of the Qur’an with respect to both content and form. [Note for example sura al-Baqarah (2:23) which reads: 'If you are in any doubt about what We have sent to Our servant, then bring a chapter like it and call in your witnesses besides God, if you are truthful.'] It is neither poetry nor prose; its rhythm and its genre and word structure are unique. It is the spiritual miracle of the prophethood of Muhammad, who never learned to read or write. [Abu Zahrah, Usul, p. 65; Sabuni, Madkhal, P. 45.]

The second aspect: The accuracy of the Qur’anic narratives

The second aspect of i’jaz in the Qur’an is its narration of events which took place centuries ago. The accuracy of the Qur’anic narratives concerning such events is generally confirmed by historical evidence. [von Denffer, ‘Ulum, P. 152.]

The third aspect: is its accurate prediction of future events

Such as the victory of the Muslims in the battle of Badr (al-Anfal, 8:7), the conquest of Mecca (al-Fath, 48:27) and the eventual defeat of the Persians by the Roman empire: The Romans were defeated in a land near-by, but even after this defeat, they

will be victorious in a few years' (al-Rum, 30:2). The Romans were defeated by the Persians when the latter took Jerusalem in 614 A.D. But seven years later the Persians were defeated when the Romans won the battle of Issus in 622. [For further details see von Denffer, 'Ulum, PP. 152-57]

The fourth aspect: is manifested in its scientific truth

Concerning the creation of man, the earth and the planetary system.

The tenets thus inform us: 'We created man from an extract of clay, then We placed him as a drop of semen in a secure resting-place. Then We turned the drop into a clot; next We turned the clot into tissue; and then We turned the tissue into bones and clothed the bones with flesh' (al-Mu'minun, 23:12-14).

That the earth was previously a part of the sun, and only after it was separated from the sun did it become suitable for human habitation (al-Anbiya', 21:30).

That all life originated in water (al-Anbiya', 21:30).

That originally the universe consisted of fiery gas (Ha-mim, 41: 11).

That matter is made up of minute particles (Yunus, 10:62).

That fertilisation of certain plants is facilitated by the wind (al-Hijr, 15:22).

The fifth aspect is its humanitarian, legal and cultural reforms

These were unprecedented in the history. Thus in the sphere of government, the ruler and the ruled were both equally subjected to adjudication under the rule of law.

In the area of civil transactions and commerce, the Qur'an established mutual agreement as the norm and essence of all contracts.

The principal Qur'anic reform in the area of property was the introduction of the doctrine of istikhlaf: the Qur'an declares that all property belongs to God, and that man, in his capacity as the vicegerent of God, is a mere trustee, whose ownership is subjected to the maslahah of society.

In the sphere of international relations, treaty relations, conduct of war, and treatment of prisoners of war; all were regulated by a set of principles which aimed at the realisation of justice and respect for human dignity.

Occasions of Revelation (asbab al-nuzul)

Asbab al-nuzul deal with the phenomenology of the Qur'an, and explain the events related to particular revelations.

The well-known asbab al-nuzul have been related to us by reliable Companions. It is a condition for the reliability of such reports that the person relating it should have been present at the time or the occasion which is relevant to a particular passage. In this way, reports from the Successors (tabi'un) only which do not go back to the Prophet and his Companions are considered to be weak (da'if). [von Denffer, 'Ulum, P. 93ff.]

Reasons to explain the importance of Asbab al-nuzul:

1- The knowledge of words and concepts is incomplete without the knowledge of the context… Ignorance of the asbab al-nuzul may thus lead to the omission or misunderstanding of a part or even the whole of an injunction. [Shatibi, Muwafaqat, III, 201.]

2- Secondly, ignorance of asbab al-nuzal may lead to unwarranted conflict. For the Qur'an comprises passages which are in the nature of probability (zahir) and ambiguity (mujmal). Such instances in the text can be clarified by reference to the circumstances in which they were received.

It is reported that in a conversation with 'Abd Allah ibn ‘Abbas, 'Umar ibn al-Khattab asked him: 'Why should there be disagreement among this ummah, all of whom follow the same Prophet and pray in the direction of the same qiblah?' To this Ibn 'Abbas replied, 'O Commander of the Faithful, the Qur'an was sent down to us, we read it and we know the circumstances in which it was revealed. But there may be people after us who will read the Qur'an without knowing the occasions of its revelation. Thus they will form their own opinion, which might lead to conflict and even bloodshed among them.'

‘Umar disagreed with Ibn 'Abbas for saying so at first but, when the latter departed, ‘Umar pondered over what he had said. He then sent for Ibn ‘Abbas only to tell him that he agreed with his view. [Shatibi, Muwafaqat, III, p. 202.]

Some of the Qur’anic passages had been revealed concerning the unbelievers, but were taken by some commentators to be of general application to Muslims and non-Muslims alike… Furthermore, the knowledge of asbab al-nuzul is informative of the conditions of the Arab society at the time. Their customary and linguistic usages and their nuances of expression were naturally reflected in the Qur’an. The peculiarities of Arab social customs often gave exegesis of the Qur’anic text a perspective and offered solutions to some of the doubts/ambiguities which would otherwise be difficult to understand. The asbab al-nuzul take full cognizance of the customary practices of Arabian society and the relationship, if any, of such practices to Qur’anic legislation. To give an example, the Qur’anic ayah 'Our Lord punish us not, if we forget or make a mistake' (al-Baqarah, 2:286), is held to be referring to unbelief, that is, when words which partake in unbelief are uttered inadvertently. This is forgiven just as are words of unbelief that are expressed under duress. However, the exemption here is not extended to similar pronouncements, such as statements of divorce, freeing of a slave, or sale and purchase, for freeing a slave was not known in the custom of the Arabs nor were the inhibitions over oath-taking (ayman). The general support of this ayah is thus given a concrete application in the light of the prevailing custom. [Khudari, Usul, p.211.]

Chapter Three: The Sunnah

Introduction

Literally, Sunnah means a clear path or a beaten track but it has also been used to imply normative practice. It may be a good example or a bad. [1. Thus we read in a Hadeeth, 'Whoever sets a good example -man sanna sunnatan hasanatan - he and all those who act upon it shall be rewarded till the day of resurrection; and whoever sets a bad example -man sanna sunnatan sayyi'atan - he and all those who follow it will carry the burden of its blame till the day of resurrection ' For details see Shawkani, Irshad, p. 33.]

The opposite of Sunnah is bid'ah, or innovation, which is characterized by lack of precedent and continuity with the past.

In the Qur'an' the word 'Sunnah' and its plural, sunan , have been used 16 times to imply an established practice.

Sunnah al-Nabi, that is, the Prophetic Sunnah, does not occur in the Qur'an as such. But the phrase uswah hasanah (excellent conduct) which occurs in sura-al-Ahzab (33:21) in reference to the exemplary conduct of the Prophet is the nearest equivalent of Sunnah al-Nabi. [4. The ayah in question addresses the believers in the following terms: 'Certainly you have, in the Messenger of God, an excellent example' (al-Ahzab, 33:21).]

The Qur'an also uses 'hikmah' (lit-wisdom) as a source of guidance that accompanies the Qur'an itself. Al-Shafi'i quotes at least seven instances where 'hikmah' occurs next to al-kitab (the Book). According to al-Shafi'i's interpretation' which also represents the view of the majority, the word 'hikmah' in this context means the Sunnah of the Prophet. [5. Shafi'i, Risalah, pp. 44-45]

Both 'Sunnah' and Sunnah Rasul Allah' have been used by the Prophet and his companions. When he sent Mu'adh b. Jabal as judge to Yemen, he asked as to the

sources on which he would rely. In reply Mu'adh referred first to the 'Book of Allah' and then the 'Sunnah of the Messenger of Allah'. [6. Abu Dawud, Sunan] In another Hadeeth, the Prophet is reported to have said, 'I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah and my Sunnah (sunnati). [7. Ibn Qayyim, I'lam, I, 222.] There is evidence to suggest the Sunnah of the Prophet was introduced into the legal theory by the jurists of Iraq towards the end of the first century. The term 'Sunnah of the Prophet' occurs' for example, in two letters which are addressed to the Umayyad ruler, 'Abd al-Malik b. Marwan (d. 86) by the Kharijite leader 'Abd Allah b. lbad, and by al-Hasan al-Basri, as well.

Initially the use of the term 'Sunnah' was not restricted to the Sunnah of the Prophet but to imply the practice of the community and precedent of the Companions. This seems to have continued till al-Shafi'i tried to restrict it to the Sunnah of the Prophet.

By the end of the second century Hijrah, the technical/juristic meaning of Sunnah appears to have become dominant.[9. Cf. Azami, Studies, p. 4.] The ulama thus discouraged the use of such expressions as the Sunnah of Abu Bakr or 'Umar. In their view, the proper usages of Sunnah were to be confined to Sunnah Allah, and Sunnah Rasul Allah, that is the Sunnah of God, or His way of doing things, and the Sunnah of His Messenger. But there were variant opinions among the ulama which disputed the foregoing, especially in view of the Hadeeth in which the Prophet is reported to have said, 'You are to follow my Sunnah and the Sunnah of the Rightly-Guided caliphs.' But again, as al-Shawkani points out, it is possible that in this Hadeeth, the Prophet had used 'Sunnah' as a substitute for 'tariqah' or the way that his Companions had shown. [10. Abu Dawud, Sunan; Shawkani, Irshad, p.33.]

Usage of the word 'Sunnah" by various types of ulama

To the ulama of Hadeeth, Sunnah refers to all that is narrated from the Prophet, his acts, his sayings and whatever he has tacitly approved, plus reports of his physical attributes and character.

The ulama of jurisprudence, however, exclude the description of the physical features of the Prophet. [3. Siba'i, Al-Sunnah, p. 47; Azami, Studies, p. 3.]

To the ulama of usul al-fiqh, Sunnah refers to a source of the Shari'ah and a legal proof next to the Qur'an.

But to the ulama of fiqh, 'Sunnah' primarily refers to a shar'i value which falls under the general category of mandub. Although in this sense, Sunnah is used almost synonymously with mandub, it does not necessarily mean that Sunnah is confined to the Mandub. For in its other usage, namely as a source of Shari'ah, Sunnah may authorize and create not only a mandub but also any of the following: wajib, haram, makruh and mubah. [11. Shawkani, Irshad, p.33.]

Sunnah and Hadeeth

The ulama used Sunnah and Hadeeth, almost interchangeably, but the two terms have meanings of their own. Hadeeth means a narrative, communication or news. In the early days of Islam following the demise of the Prophet, stories relating to the life and activities of the Prophet dominated all other kinds of narratives, so the word began to be used almost exclusively to a narrative from, or a saying of, the Prophet. [12. Cf. Azami, Studies, pp. 1-3]

Hadeeth is a narration of the conduct of the Prophet whereas Sunnah is the example. Hadeeth in this sense is the vehicle or the carrier of Sunnah.

khabar and Athar'

These terms been used as alternatives to 'Hadeeth'.

Literally, khabar means 'news or report', and athar, 'impression, vestige or impact'.

The majority of ulama used Hadeeth, khabar and athar synonymously, whereas others have distinguished khabar from athar.

Khabar[15] was used synonymously with Hadeeth; athar (and sometimes 'amal) was used to imply the precedent of the Companions. [14. Cf. Azami, Studies, p. 3.]

The majority of ulama have upheld the precedent of the Companions as one of the transmitted (naqli) proofs. Imam Malik even went so far as to set aside the Prophetic Hadeeth in its favor on the strength of the argument that athar represented the genuine Sunnah, as the Companions were in a better position to ascertain the authentic Sunnah of the Prophet. AlShafi'i' (d. 204/819) contended that Hadeeth from the Prophet, even a solitary Hadeeth must take priority over the practice and opinion of the community, the Companions and the Successors. [16. Shafi'i, Risalah, p.177] In the absence of a Hadeeth from the Prophet, al-Shafi'i followed the precedent of Companions, and in cases where a difference of opinion existed among them, he preferred the opinion of the first four caliphs, or one which was in greater harmony with the Qur'an. [15. Shafi'i, Risalah, pp.128-130.]

Al-Shafi'i directed his efforts against the prevailing practice which gave preference to the practice of the community and decisions of Companions, over Hadeeth.[16] He

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[15] Used often as the more general term referring to both hadeeth (of or about the prophet) and athar (of or about the companions.)

[16] There is no disagreement that the Sunnah is superior to the saying of anyone. Malik said, “All people’s statements are subject to acceptance or refusal except those of the dweller of this grave,” and he pointed to the grave of the Prophet (blessings and peace be upon him). They would argue that the hadeeth handed down to us was better understood by the companions and successors, and they may have been aware of other ahadeeth as well. The position of al-Shafi’i is superior since the companions disagreed, and no one encompassed the knowledge of the Prophet (blessings and peace be upon him). Also, there has to be a parameter by which all matters are judged, and that is the sunnah of the

attempted to overrule the argument of Imam malik, that the Madinese practice was more authoritative than Hadeeth. In his Muwatta, Malik (d. 179/795) generally opens every legal chapter with a Hadeeth from the Prophet, but in determining the issues, he does not consistently adhere to the priority of Hadeeth over athar. It is interesting to note that the Muwatta' contains 1,720 Hadeeths, out of which 822 are from the Prophet and the remainder from the Companions, Successors and others. [17. Guraya, Origins, pp. 29-34.]

Proof-Value (Hujjiyyah) of Sunnah

The ulama are unanimous that Sunnah is a source of Shari'ah and that in its rulings with regard to halal and haram it stands on the same footing as the Qur'an.' [18. Shawkani, Irshad, p. 33.]

The words of the Prophet, as the Qur'an tells us, are divinely inspired (al-Najm, 53:3). While commenting on the Qur'anic ayah which states of the Prophet that 'he does not speak of his own desire, it is none other than wahy sent to him', Al-Ghazali writes that some of the divine revelation which the Prophet received constitutes the Qur'an, whereas the remainder is Sunnah. As for us and the generality of Muslims who have received the words of the Prophet through the verbal and written reports of narrators, we need to ascertain their authenticity. [20. Ghazali, Mustasfa, I, 83.]

The proof of authenticity may be definitive (qat'i), or amount to a preferable conjecture (al-zann al-rajih); in either case, the Sunnah commands obedience of the mukallaf.

The Sunnah of the Prophet is a proof (hujjah) for the Qur'an, testifies to its authority and enjoins the Muslim to comply with it. The following ayat are all explicit

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Prophet (blessings and peace be upon him), which Allah promised to preserve for the entire ummah, not a single generation.

on this theme, all of which are quoted by al-Shafi'i in his renowned work, Al-Risalah (P. 47ff):

And whatever the Messenger gives you, take it, and whatever he forbids you, abstain rom it (al-Hashr, 59:7).

Obey God and obey the Messenger and those who are in charge of affairs among you. Should you happen to dispute over something, then refer it to God and to the Messenger (al-Nisa', 4:58-59).

'Whoever obeys the Messenger verily obeys God' (al-Nisa

'Whenever God and His Messenger have decided a matter' it is not for a faithful man or woman to follow another course of his or her own choice' (al-Ahzab, 33:36).

In yet another place the Qur'an stresses that submission to the authority of the Prophet is not a matter of mere formalistic legality but is an integral part of the Muslim faith: 'By thy Lord, they will not believe till they make thee a judge regarding disagreements between them and find in themselves no resistance against accepting your verdict in full submission' (al-Nisa', 4:65).

The Companions have reached a consensus on Sunnah being a proof next to the Qur'an in all shar'i matters: Both during the lifetime of the Prophet and following his demise' they eagerly obeyed the Prophet's instructions and followed his examples regardless as to whether his commands or prohibitions originated in the Qur'an or otherwise.

The first two Caliphs Abu Bakr and Umar; resorted to the Sunnah of the Prophet whenever they knew of it. In cases when they did not know, they would ascertain if other Companions had any knowledge of the Prophetic Sunnah in connection with particular issues. The Caliph Umar is also on record as having issued written instruction to his judges in which he asked them to follow the Sunnah of the Prophet whenever they could not find the necessary guidance in the Qur'an . [23. Shawkani, Irshad, p. 36; Khallaf, 'Ilm, p. 38]

Classification and Value

Sunnah has been classified in various ways. However, two of the most commonly accepted criteria for such classifications are the subject matter (matn) of Sunnah and the manner of its transmission (isnad).

To begin with, the Sunnah is divided into three types, namely verbal (qawli), actual (fi'li) and tacitly approved (taqriri).

The other division of the Sunnah which will concern us here is its division into legal and non-legal Sunnah.

Verbal, Actual Sunnah and Tacit Approval

The verbal Sunnah consist of the sayings of the Prophet.

The Actual Sunnah of the Prophet consists of his deeds and actual instructions, such as the way he performed the salah…etc. Similarly, the fact that the Prophet authorized mutilation of the hand of the thief from the wrist illustrated, in actual terms, how the Qur'anic ayah (al-Ma'idah' 5:38) should be implemented.

The tacitly approved Sunnah consists of the acts and sayings of the Companions which the Prophet approved. It may be inferred from his silence and lack of disapproval, or his explicit approval. [25. Abu Zahrah, Usul, p. 89.] An example of such a Sunnah is the report that two of the Companions went on a journey, and when they failed to find water for ablution, they both performed the obligatory prayers with tayammum, that is, wiping the hands, face and feet with clean sand. Later, when they found water, one of them performed the prayers again whereas the other did not. Upon their return, they related their experience to the Prophet, who is reported to have approved both courses of action. Hence it became Sunnah taqririya. [26. Tabrizi, Mishkat, I, 166, Hadeeth no 533; Shawkani, Irshad, p. 41.]

The sayings of Companions such as, 'we used to do such and such during the lifetime of the Prophet' constitute a part of Sunnah taqririya only if the subject is such

that it could not have failed to attract the attention of the Prophet. An example of this is the saying of Abu Sa'id al-Khudri that 'for the charity of 'id al-Fitr, we used to give a sa' of dates or of barley'. [28. Shawkani, Irshad, p. 61.]

Non-legal and Legal Sunnah

Non-legal Sunnah (Sunnah ghayr tashri'iyyah) mainly consists of the ritual activities17 of the Prophet (alaf'al al-jibilliyyah) such as the manner which he ate, slept, dressed…etc. Activities of this nature are not of primary importance to the Prophetic mission and therefore do not constitute legal norms. According to the majority of ulema, the Prophet's preferences in these areas, such as his favorite colors, or the fact that he slept on his right side in the first place, etc., only indicate the permissibility (ibahah). [29. Shaltut, Al-Islam, p. 5 12.]

The reason is that such acts could be either wajib or mandub or merely mubah. The first two can only be established by means of positive evidence. Since there is no such evidence, there remains the category of mubah. [30. Isnawi, Nihayah] As for the report that the prominent Companion, 'Abd Allah b. 'Umar used to imitate the Prophet in his natural activities too, it is held that he did so, not because it was recommended (mandub), but because of his devotion and affection for the Prophet.]

On a similar note, Sunnah which partakes in specialized or technical knowledge such as medicine, commerce and agriculture, strategy of war, is once again held to be peripheral to the main function of the Prophet and not part of the Shari'ah. [31. Shaltut, Al-Islam, p. 512]

According to the majority, matters regarding which the Prophet had a special ruling, are partly determined by reference to the relevant text of the Qur'an and the manner in which the Prophet is addressed. When, for example, the Qur'an addresses

[17] Natural or Customary.

the Prophet in such terms as 'O you Messenger', or 'O you folded up in garments', it is implied that the address is to the Prophet alone unless proven otherwise. [33. Hitu, Wajiz, p. 273]

Certain activities of the Prophet may fall in between the two categories of legal and non-legal Sunnah. Thus it may be difficult to determine whether an act was strictly personal or intended to set an example. It is also known that at times the Prophet acted in a certain way which was in accord with the then prevailing custom of the community. For instance, the Prophet kept his beard at a certain length and trimmed his moustache. The majority of ulama have viewed this not as a mere observance of the familiar usage at the time but as an example for the believers to follow. Others have held the opposite view by saying that it was a part of the social practice of the Arabs which was designed to prevent resemblance to the Jews and some non-Arabs who used to shave the beard and grow the moustache.[18] Similarly, it is known that the Prophet used to go to the 'id prayers (salat al-'id) by one route and return from the mosque by a different route, and that the Prophet at times performed the hajj pilgrimage while riding a camel. The Shafi'i jurists are inclined to prefer the commendable (mandub) in such acts to mere permissibility whereas the Hanafis consider them as [34. Shawkani, Irshad, p. 35ff] merely permissible, or mubah.

The legal Sunnah (Sunnah tashri'iyya) consists of the exemplary conduct of the Prophet, be it an act, saying, or a tacit approval.

This variety may be divided into three types, namely the Sunnah which the Prophet laid down in his capacities

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[18] Why would he command them to grow the beards? There are also other reasons to make it mandatory, which include that shaving is a change of Allah’s creation, who made men have beards and women without them. This would also be imitation of women and making vague the distinctions between the two sexex.

1. as Messenger of God,
2. as the Head of State or imam,
3. or in his capacity as a judge.

We shall discuss each of these separately, as follows:

(a) In his capacity as Messenger of God,

In this capacity, the Sunnah may consist of a clarification of the ambiguous (mujmal) parts of the Qur'an or specifying and qualifying the general and the absolute contents of the Qur'an. Whatever the Prophet has authorized pertaining the principles of religion, especially in the area of devotional matters (ibadat) and rules expounding the lawful and the unlawful, that is, the Halal and haram, constitutes general legislation (tashri' 'amm). All commands and prohibitions that are imposed by the Sunnah are binding on every Muslim regardless of individual circumstances, social status, or Political office. In acting upon these laws, the individual normally does not need any prior authorization by a religious leader or the government.[35. Shaltut, Al-Islam, p. 513.]

The question arises as to how it is determined that the Prophet acted in one or the other of his three capacities as mentioned above. The uncertainty which has arisen in answering this question in particular cases is, in fact, one of the main causes of juristic disagreement (ikhtilaf). An enquiry of this nature helps to provide an indication as to the value of the Sunnah in question: whether it constitutes an obligation, commendation, or ibadah on the one hand, or a prohibition or abomination (karahah) on the other.

When the direction of an act is known from the evidence in the sources, there remains no doubt as to its value. If, for example, the prophet attempts to explain an ambiguous ruling of the Qur'an, the explanation so provided would fall in the same category of values as the original ruling itself.

According to the majority of ulema, if the ambiguous of the Qur'an is known to be obligatory' or commendable, the explanatory Sunnah would carry the same value. For

example, all the practical instructions of the Prophet which explained and illustrated the obligatory Salah would be wajib and his acts pertaining to the superiority prayers such as Salah on the occasion of lunar and solar eclipse salat al-khusuf wa al-kusuf) would be mandub.[36. Badran, Bayan, p. 41.]

Alternatively, the Sunnah may itself provide a clear indication as to whether it is wajib, mandub, or merely permissible.

Additionally, the subject-matter of the Sunnah may provide a sign. With regard to prayers, for example, the adhan and iqamah are indications as to the obligatory nature of the prayer. For it is known that they precede the obligatory Salah only. A salah which is not obligatory such as the 'id prayer, or Salat al-istisqa' ('prayers offered at the time of drought'), are not preceded by them.

Another method of evaluating an act is by looking at its opposite, that is, its absence. If it is concluded that the act in question would have been in the nature of a prohibition had it not been authorized by the Prophet, then this would imply that it is obligatory. For example, circumcision consists essentially of the infliction of injury for no obvious cause, had it not been made into an obligation, then it would presumably be unlawful. This is applicable to all penalties the Shari'ah prescribed.

Lastly, an act may require the belated performance (qada') of a wajib or a mandub, and as such its value would correspond to that of its prompt performance (ada'). [37. Hitu, p. 275]

If no such verification is possible, then one must look at the intention behind its enactment. If a Prophetic act is intended as a means of seeking the pleasure of God, then it is classified as mandub; and according to a variant view, as wajib. If the intention could not be detected either, then it is classified as wajib, and according to a variant view as mandub. [38. Hitu, p. 276.]

(b) All the rulings of Sunnah which originate from the Prophet in his capacity as imam or the Head of State, such as allocations and expenditure of public funds,

decisions pertaining to military strategy and war, appointment of state officials, distribution of booty, signing of treaties, etc., partake in the legal Sunnah which, however, does not constitute general legislation (tashri' 'amm). Sunnahs of this type may not be practiced by individuals without obtaining the permission of the authorities first. The mere fact that the Prophet acted in a certain way, does not bind individuals directly.[39. Shaltut, Al-Islam, p. 513.] To give an example, according to a Hadeeth 'whoever kills a warrior [in battle] may take his belongings'.[40. Abu Dawud, Sunan, II, 758, Hadeeth no. 2715]

The ulama have differed as to the precise import of this Hadeeth. According to one view, the Prophet uttered this Hadeeth in his capacity as Imam, so no-one is entitled to the belongings of his slain enemy without the authorization of the Imam. Others held that this is a general law entitling the soldier to the belongings of the deceased even without permission.[41. Shaltut, Al-Islam, p. 515.]

The Prophet might have uttered this Hadeeth in order to encourage the Companions to do jihad in the light of the circumstances, which may have been such that an incentive of this kind was required; or it may be that it was intended to lay down a general law. According to Imam Shafi'i, the Hadeeth under consideration lays down a general rule. For this is the general norm in regards to the Sunnah. The main purpose of the Prophet's mission was to lay down the foundations of the Shari'ah, and unless there is an indication to the contrary, one must assume that the purpose of the Hadeeth is to lay down general law.[42. Shaltut, Al-Islam, p. 516.]

(c) Sunnah which originates from the Prophet in his capacity as a judge in particular disputes usually consists of two parts: the part which relates to claims, evidence and factual proof and the judgment which is issued as a result. The first part is situational and does not constitute general law, whereas the second part lays down general law, with the proviso however, that it does not bind the individual directly, and no-one may act upon it without the prior authorization of a competent judge. Since the Prophet

himself acted in a judicial capacity, the rules that he has enacted must therefore be implemented by the office of the qadi.[43. Shawkani, Irshad, p. 36; Khallaf, 'Ilm, p. 44.] Hence when a person has a claim over another which the latter denies, but the claimant knows of a similar dispute which the Prophet has adjudicated in a certain way, this would not entitle the claimant to take the law into his own hands. He must follow proper procedures to prove his claim and to obtain a judicial decision.[44 Shaltut, Al-Islam, p. 514.]

To give another example, juristic disagreement has arisen concerning a Hadeeth on the reclamation of barren land which reads, 'whoever reclaims barren land becomes its owner.[46. Abu Dawud, Sunan (Hasan's trans.), II, 873, Hadeeth no. 3067; Tabrizi, Mishkat, II, 889, Hadeeth no. 2945.]

The ulama have differed as to whether the Prophet uttered this Hadeeth in his prophetic capacity or in his capacity as head of state. If the former is established to be the case then the Hadeeth lays down a binding rule of law. Anyone who reclaims barren land becomes its owner and need not obtain any permission from the Imam or anyone else. If on the other hand it is established that the Prophet uttered this Hadeeth in his capacity as Imam, then it would imply that anyone who wishes to reclaim barren land must obtain the prior permission of the lmam. The Hadeeth in other words, only entitles the lmam to grant the citizen the right to reclaim barren land. The majority of jurists have adopted the first view whereas the Hanafis have held the second. The majority of jurists, including Abu Hanifa's disciple, Abu Yusuf, have held that the consent of the State is not necessary. But it appears that jurists and scholars of the latter ages prefer the Hanafi view. The Malikis on the other hand only require government consent when the land is close to a human settlement, and the Hanbalis only when it has previously been alienated by another person. [47. Al-Marghinani, Hedaya (Hamilton's trans.)' p. 610.]

The case of Hind, the wife of Abu Sufyan. This woman complained to the Prophet that her husband was a tight-fisted man despite his affluence. The Prophet instructed her to 'take [of her husband's property] what is sufficient for yourself and your child according to custom. The ulama have disagreed as to whether the Prophet uttered this so as to enact a general rule, or whether he was acting in the capacity of a judge. If it be admitted that it is a judgment addressing a particular case, then it would only authorize the judge to issue a corresponding order. Thus it would be unlawful for a creditor to take his entitlement from the property of his debtor without a judicial order. [49. Shaltut, Al-Islam, p. 515.]

The Hanafis, Shafis and Hanbalis have held that when a capable man refuses to support his wife, it is for her to take action and for the qadi to grant her a judgment. If he still refuses, the qadi may order the sale of his property. He may even imprison a persistently neglectful husband. The wife is, however, not entitled to a divorce, the reason being that when the Prophet instructed Hind, she was not granted the right to divorce. The Malikis are in agreement with the majority view, with the only difference that in the event of persistent refusal, they entitle the wife to divorce. Thus the ulama have generally considered the Hadeeth under consideration to consist of a judicial decision of the Prophet, and as such it only authorizes the judge to adjudicate the wife's complaint and to specify the quantity of maintenance. [50. Al-Khatib, Mughni al-Muhtaj, III, 442]

Sunnah which consists of general legislation often has the quality of permanence and universal application to all Muslims. Sunnah of this type usually consists of commands and prohibitions which are related to the Qur'an in the sense of endorsing, elaborating or qualifying the general provisions of the Holy Book. [51. Shaltut, Al-Islam, p. 516.]

Qur'an and Sunnah Distinguished

The Prophet clearly expressed the concern that nothing of his own Sunnah be confused with the text of the Quran. This was the main reason why he discouraged his Companions, at the early stage of his mission from reducing the Sunnah into writing let it be confused with the Quran.

The Companions used to verify instances of doubt concerning the text of of the Quran with the Prophet himself, who would often clarify it for them through clear instruction. This manner of verification is, however, unknown with regard to the Sunnah.[19]

The entire text of the Quran has come down to us through continuous testimony (*tawatur*) whereas the Sunnah has for the most part been narrated and transmitted in the form of solitary, or *ahad*, reports. Only a small portion of the Sunnah has been transmitted in the form of *mutawatir*.

The Sunnah consists of the transmission of concepts in words and sentences that belong to the narrators.[20]

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[19] This pertains to the wording of the sunnah. However, the meanings of it used to be verified by the companions, who asked the Prophet for further elaboration on certain matters. Sometime, the Prophet, like in the case of Du'a' would correct the wording of his statements if someone erred while saying it. The case of the du'a' of sleep, in which he instructed the companion who said "your messenger that you sent" to rather say "your prophet that you sent", is one example.

[20] It is to be said here that they excelled in preserving the very words of the Prophet (blessings and peace be upon him). Something that is obvious through cross checking the same reports narrated by two different companions. Some of the collectors of the sunnah didn't allow any change in the

The scope of *ikhtilaf,* or disagreement, over the Sunnah is more extensive than that which may exist regarding the Quran. Disagreement over the Sunnah extends not only to questions of interpretation but also to authenticity of transmission.[21]

Priority of the Qur'an over the Sunnah

The jurist must resort to the Sunnah only when he fails to find any guidance in the Quran. Should there be a clear text in the Quran, it must be followed and be given priority over any ruling of the Sunnah which may happen to be in conflict with the Quran.[22]

If the Qur'anic text is clear, it must be given priority over any ruling of the Sunnah which may be in conflict. This priority is partly a result of the fact that the Qur'an consists wholly of manifest revelation (wahy zahir[23]) whereas the Sunnah mainly of

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words, while the majority accepted minor ones from knowledgeable narrators who are capable of ensuring the preservation of the precise meanings.

[21] It is to be mentioned here that the scholars of Islam have laid down the foundations of the scientific method in the verification of reports, and Allah used them to preserve the way of His final Messenger, and consequently His own word, the Quran, which was explained to us through the sunnah. The weak ahadeeth in Islam are more verifiable scientifically than all of the Biblical books. That is for the simple reason that many of them, as per the RSV, have no known author, and those who do, are not available in their original manuscripts.

[22] I would phrase this statement differently, and say that the jurist must look first for the proof in the Quran, and then the sunnah. The sunnah clarifies the rulings of the Quran, and will shed more light on them, so it is always sought for that reason. If a conflict is not reconcilable in any other way, the Quran will take precedence over the sunnah, and the more authentic hadeeth will take precedence over the less authentic.

[23] Conveyed to the Prophet directly through Jibreel in the state of wakefulness.

internal revelation (wahy batin). The authenticity of the Qur'an is not open to doubt, and must therefore take priority over the Sunnah, or at least that part of it which is speculative (zanni) in authenticity. Thirdly, the Sunnah is explanatory to the Quran. Commentary should occupy a secondary place to the source.[Badran, Usul, p. 101.] Furthermore, the order of priority is clearly established in the aforementioned Hadeeth of Mu'adh b. Jabal.

A practical consequence of this order is seen in the Hanafi distinction between fard and wajib. The former is founded in the definitive authority of the Qur'an, whereas the latter is founded in the definitive[24] Sunnah, but is one degree weaker because of a possible doubt in its transmission.[25]

There should in principle be no conflict between the Qur'an and the authentic Sunnah. If, however, present, they must be reconciled and both should be retained. If this is not possible, the Sunnah in question is likely to be of doubtful authenticity and must therefore give way to the Qur'an. No genuine conflict is known to exist between the Mutawatir Hadeeth and the Qur'an.

It has, however, been suggested that establishing such an order of priority is contrary to the basic role that the Sunnah plays in relation to the Qur'an.[26] As the familiar Arabic phrase, al-Sunnah qadiyah 'ala al-kitab (Sunnah is the arbiter of the Qur'an) suggests, it is normally the Sunnah which explains the Qur'an, not vice versa. This means that the Qur'an is more dependent on the Sunnah than the Sunnah is on the Qur'an.[59. While quoting Awza'i on this point, Shawkani (Irshad, p. 33) concurs with

[24] He means definitive in its implication, not transmission.

[25] The hanafees distinguish between the Quran and mutawatir sunnah on one side and the ahead sunnah on the other.

[26] Note that there is no disagreement over the virtue and honor of the Quran over the sunnah. The disagreement is about the legislative authority.

the view that the Sunnah is an independent source of Shari'ah, and not necessarily, as it were, a commentary on the Qur'an only See also Shatibi, Muwafaqat, IV, 4.] In the event, for example, where the text of the Qur'an imparts more than one meaning, it is the Sunnah which specifies the meaning. Again, the manifest (Zahir[27]) of the Qur'an may be abandoned by the authority of the Sunnah. It is not the purpose of the Qur'an to explain the Sunnah, as this was done by the Prophet himself. Some ulama, also, have the view Hadeeth of Mu'adh b. Jabal is anomalous. Also, the Mutawatir Hadeeth stands on the same footing as the Qur'an itself. Likewise, the manifest (Zahir) of the Qur'an is open to interpretation and ijtihad in the same way as the solitary, or Ahad, Hadeeth. Furthermore, according to the majority, before implementing a Qur'anic rule one must ascertain from the sunnah it has not been qualified or given an interpretation on which the text of the Qur'an is not self-evident.[61. See Shatibi, Muwafaqat, IV, 5.]

In response to the assertion that the Sunnah is the arbiter of the Qur'an, al-Shatibi points out, that this need not interfere with the order of priority, for in all cases where the Sunnah explains and interprets the Qur'an, the Qur'an is not abandoned in favor of it. The word qadiyah (arbiter) therefore means mubayyinah (explanatory.)

When an interpreter explains a legal text, it would hardly be correct to say that we act upon his words without referring to the text itself. [62. Shatibi, Muwafaqat, IV, 5.]

Is Sunnah an Independent Source?

An adequate answer necessitates an elaboration of the relationship of the Sunnah to the Qur'an in the following three capacities:

Firstly, the Sunnah may consist of rules that merely confirm the Qur'an. A substantial part of the Sunnah is, in fact, of this variety: E.g. the ahadeeth pertaining to the five pillars and the rights of one's parents, respect for the property of others, etc.

[27] Which is probable, but not absolute, in its implications.

Secondly, the Sunnah may consist of an explanation or clarification to the Qur’an; it may clarify the ambivalent (mujmal) of the Qur’an, qualify its absolute statements, or specify the general terms of the Qur'an. This is once again the proper role that the Sunnah plays in relationship to the Qur’an: it explains it. Through this type of Sunnah that Qur'anic expressions like salah, zakah, hajj and riba, etc., have acquired their juridical (shari') meanings.

The foregoing two varieties comprise the largest bulk of Sunnah, and, by agreement, they are integral to the Qur'an and constitute a logical whole with it.

Thirdly, the Sunnah may consist of rulings on which the Qur'an is silent. This variety is referred to as al-Sunnah al-muassisah, or 'founding Sunnah'. Ex.: the prohibition of simultaneous marriage to the maternal and paternal aunt of one's wife (unlawful conjunction), the right of pre-emption (shuf'a), the grandmother's entitlement to a share in inheritance, the punishment of rajm, that is, death by stoning for adultery, all originate in the Sunnah as the Qur'an itself is silent on these matters. [69. Ibn Qayyim, I'lam, II, 233; Khallaf, 'Ilm, p. 40]

There is some disagreement among jurists as to whether the Sunnah, or this last variety of it at any rate, constitutes an independent source of Shari'ah. Some ulama of the latter ages (al-muta’akhkhirun), including al-Shatibi and al-Shawkani, have held the view that the Sunnah is an independent source.[70. Cf. Shawkani, Irshad, p. 33; Siba'i, Al-Sunnah, p. 380.] They have further maintained that the Qur'anic ayah in sura al-Nahl (16:44 - quoted above) is inconclusive and that despite its being clear on the point that the Prophet interprets the Qur'an it does not overrule the recognition of the Sunnah as an independent source. On the contrary, it is argued that there is evidence in the Qur'an which substantiates the independent status of Sunnah. The Qur'an, for example, in more than one place requires the believers to 'obey God and obey His Messenger, (al-Nisa. 4:58; 4:80; al-Ma'idah, 5:92). The fact that obedience to the Prophet is specifically enjoined next to obeying God warrants the conclusion that

obedience to the Prophet means obeying him whenever he orders or prohibits something on which the Qur'an might be silent. For if the purpose of obedience to the Prophet were to obey him only when he explained the Qur'an, then 'obey God' would be sufficient.[71. Shatibi, Muwafaqat, IV, 7.] Elsewhere the Qur'an clearly places submission and obedience to the Prophet at the very heart of the faith as a test of one's acceptance of Islam.

Furthermore, the proponents of the independent status of the Sunnah have quoted the Hadeeth of Mu'adh b. Jabal in support of their argument. The Hadeeth is clear on the point that the Sunnah is authoritative in cases on which no guidance can be found in the Qur'an. The Sunnah, in other words, stands on its own feet regardless of whether it is substantiated by the Qur'an or not .[72. Shatibi, Muwafaqat, IV, 8; Siba'i, Al-Sunnah, p. 383.] According to the majority of ulema, however, the Sunnah, in all its parts, even when it enacts original legislation, is explanatory and integral to the Qur'an.[73. Cf. Abu Zahrah, Usul, p. 82.] Al-Shafi'i's views on this matter are representative of the majority position. In his Risalah, al-Shafi'i' states: I do not know anyone among the ulama to oppose [the doctrine] that the Sunnah of the Prophet is of three types: first is the Sunnah which prescribes the like of what God has revealed in His Book; next is the Sunnah which explains the general principles of the Qur'an and clarifies the will of God; and last is the Sunnah where the Messenger of God has ruled on matters on which nothing can be found in the Book of God. The first two varieties are integral to the Qur'an, but the ulama have differed as to the third.[74. Shafi'i, Risalah, pp. 52-53.] Al-Shafi'i goes on to explain the views that the ulama have advanced concerning the relationship of Sunnah to the Qur'an. One of these views, which receives strong support from al-Shafi'i himself, is that God has explicitly rendered obedience to the Prophet an obligatory duty (fard). In his capacity as Messenger of God, the Prophet has introduced laws some of which originate in the Qur'an while others do not. But all Prophetic legislation emanates in divine authority. The Sunnah and the

Qur'an are of the same provenance, and all must be upheld and obeyed. According to yet another view there is no Sunnah whose origin cannot be traced back to the Qur'an. This view maintains that even the Sunnah which explains the number and content of salah and the quantities of zakah as well as the lawful and forbidden varieties of food and trade merely elaborates general principles of the Qur'an. [75. Shafi'i, Risalah, pp. 52-53.] More specifically, all the aHadeeth which provide details on the lawful and unlawful varieties of food merely elaborate the Qur'anic declaration that God [76. Cf. Siba'i, Al-Sunnah, p.has permitted wholesome food and prohibited that which is unclean (al-A'raf: 7:157). 388.]

The majority view, which seeks to establish an almost total identity between the Sunnah and the Qur'an, further refers to the saying of the Prophet's widow, 'A'ishah, when she attempted to interpret the Qur'anic epithet wa innaka la 'ala khuluqin 'azim ('and you possess an excellent character') (al-Qalam, 68:4). 'A'ishah is quoted to have said that 'his (the Prophet's) khuluq was the Qur'an'. Khuluq in this context means the conduct of the Prophet, his acts, sayings, and all that he has approved. Thus it is concluded that the Sunnah is not separate from the Qur'an. [77. Qurtubi, Tafsir, XVIII, 227.]

And finally, the majority explain that some of the rulings of the Sunnah consist of an analogy to the Qur'an. For example, the Qur'an has decreed that no one may marry two sisters simultaneously. The Hadeeth which prohibits simultaneous marriage to the maternal and paternal aunt of one's wife is based on the same effective cause ('illah), which is to avoid the severance of close ties of kinship (qat' al-arham).

In short, the Sunnah as a whole is no more than a supplement to the Qur'an. The Qur'an is indeed more than comprehensive and provides complete guidance on the broad outline of the entire body of the Shari'ah. [80. Cf. Siba'i, Al-Sunnah, p. 388-90.]

In conclusion, it may be said that both sides are essentially in agreement on the authority of Sunnah as a source of law and its principal role in relationship to the

Qur'an. They both acknowledge that the Sunnah contains legislation which is not found in the Qur'an.[81. Cf. Siba'i, Al-Sunnah,, p. 385] The difference between them seems to be one of interpretation rather than substance.

Distortion and Forgery

There is no dispute over the occurrence of extensive forgery in the Hadeeth literature. The ulama of Hadeeth are unanimous on this.

[History of Forgery]

There is some disagreement over determining the historical origins of forgery. While some observers have given the caliphate of 'Uthman as a starting point, others have dated it a little later, at around the year 40 Hijrah, when political differences between the fourth caliph, 'Ali, and Mu'awiyah led to the division of the Muslims. According to a third view, it started during the caliphate of Abu Bakr when he waged the War of Apostasy. But the year 40 is considered the more likely starting point for serious and persistent differences in the community, marked by the emergence of the Kharijites and the Shi'ah. When misguided elements failed to find any authority in the sources for their views, they either imposed a distorted interpretation, or embarked on outright fabrication.[83. Siba'i, Al-Sunnah, p. 75]

[Types of Forgery]

The attribution of false statements to the Prophet may be divided into two types:

(1) deliberate forgery, which is usually referred to as Hadeeth mawdu';

(2) unintentional fabrication, which is known as Hadeeth batil and is due mainly to error and recklessness in reporting. For example, in certain cases it is noted that the chain of narrators ended with a Companion or a Successor only but the transmitter instead extended it directly to the Prophet. The result is all the same. However, our present discussion is mainly concerned with deliberate fabrication in Hadeeth.

The initial forgery is believed to have occurred in the personality cult literature (fada'il al-ashkhas). The earliest, according to the Sunnis, was committed by the Shi'ah. This is illustrated by the Hadeeth of Ghadir Khumm in which the Prophet is quoted to have said that "Ali is my brother, executor and successor. Listen to him and obey him'. [85. For details see Siba'i, Al-Sunnah, pp. 76-80] There are numerous fabricated aHadeeth condemning Mu'awiyah, including, the one in which the Prophet is quoted to have ordered the Muslims, 'When you see Mu'awiyah on my pulpit, kill him.' The fanatic supporters of Mu'awiyah and the Umayyad dynasty fabricated Hadeeth such as 'The trusted ones are three: I, Gabriel and Mu'awiyah. [86. Siba'i, p. 81.] The Kharijites are on the whole considered to have avoided fabricating Hadeeth, which is due mainly to their belief that the perpetrator of a grave sin is no longer a Muslim. [87. Siba'i, p. 82.]

A group of heretic factions known as al-Zanadiqah (pl. of Zindiq), owing to their hatred of Islam, fabricated Hadeeth which discredited Islam in the view of its followers such as: 'eggplants are cure for every illness'; and 'beholding a good-looking face is a form of 'ibadah'. It is reported that just before his execution, one of the notorious fabricators, 'Abd al-Karim b. Abu al-'Awja', confessed that he had fabricated 4,000 aHadeeth.[Azami, Studies, p. 68.]

Racial, tribal and linguistic fanaticism was yet another context in which Hadeeth were fabricated. Note for example the following: 'When ever God was angry, He sent down revelation in Arabic, but when contented, He chose Persian for this purpose. [89. Siba'i, Al-Sunnah, p. 85ff.] These have been isolated by the ulama and placed in the category of al-Mawdu'at. [90. Note e.g. Jalal al-Din al-Suyuti's (d. 911 A.H.) Al-La'ali al-Masnu'ah fi al-AHadeeth al-Mawdu'ah; Shaykh 'Ali al-Qari al-Hanafi (d. 1014), Al-Mawdu'at al-Kabir, and Yahya b. 'Ali al-Shawkani (d. 1250), Al-Fawa'id al-Majmu'ah fi'l-AHadeeth al-Mawdu'ah.]

Among the forgers are professional story-tellers and preachers (al-qussas wa'lwa'izun), whose urge for popularity led them into making up stories and attributing them to the Prophet. It is reported that once a story-teller cited a Hadeeth to an audience in the mosque on the authority of Ahmad b. Hanbal and Yahya b. Ma'in which runs as follows: 'Whoever says 'there is no God but Allah', Allah will reward him, for each word uttered, with a bird in Paradise, with a beak of gold and feathers of pearls.' At the end of his sermon, the speaker was confronted by Ahmad b. Hanbal and Yahya b Ma'in who were present on the occasion and told the speaker that they had never related any Hadeeth of this kind.[Hitu, Wajiz, p. 291.]

Juristic and theological differences constitute another theme of forgery. This is illustrated by the following statement attributed to the Prophet: 'Whoever raises his hands during the performance of salah, his salah is null and void.' In yet another statement, we read: 'Whoever says that the Qur'an is the created speech of God becomes an infidel [...] and his wife stands divorced from him as of that moment.'

The religious zeal of some individuals led them to the careless ascription of Hadeeth to the Prophet. This is illustrated by the forgeries committed by one Nuh b. Abu Maryam on the virtues of the various suras of the Qur'an. [Hitu, Wajiz, p. 291.]

Classification and Value:

[From the viewpoint of the continuity of their chains]

From the viewpoint of the continuity and completeness of their chains of transmitters, the Hadeeth are once again classified into two categories: continuous (muttasil) and discontinued (ghayr muttasil). A continuous Hadeeth is one which has a complete chain of transmission from the last narrator all the way back to the prophet. A discontinued Hadeeth, also known as Mursal, is a Hadeeth whose chain of transmitters is broken and incomplete. The majority of ulama have divided the continuous Hadeeth into the two

main varieties of Mutawatir and Ahad. To this the Hanafis have added an intermediate category, namely the 'well-known', or Mashhur.

The Continuous Hadeeth

The Mutawatir

Literally, Mutawatir means 'continuously recurrent'. In the present context, it means a report by an indefinite number of people related in such a way as to preclude the possibility of agreement to perpetuate a lie. Such a possibility is inconceivable owing to their large number, diversity of residence, and reliability.[94 Shawkani, Irshad, p. 46; Abu Zahrah, Usul, p. 84]

A report would not be called Mutawatir if its contents were believed on other grounds, such as the rationality of its content, or that it is deemed to be a matter of axiomatic knowledge. [95 Khudari, Usul, p. 214]

A report is classified as Mutawatir only when it fulfills the following conditions:

a) The number of reporters in every period or generation must be large enough to preclude their collusion in propagating falsehood.
b) The reporter must base their report on sense perception. It must be based on certain knowledge, not mere speculation.
c) The attainment of certainty; can be obtained through reports of non-Muslims, profligates and even children who have reached the age of discernment, that is, between seven and fifteen.
d) The reporters should not be biased in their cause or associated with one another through a political or sectarian movement.

The authority of a mutawatir hadith is equivalent to that of the Quran. Universal continuous testimony (tawatur) engenders certainty (yaqin) and the knowledge that it created is equivalent to knowledge that is acquired through sense-perception.

When the reports of a large number of transmitters of hadith concur in their purport but differ in wording or in form, only their common meaning is considered mutawatir, known as mutawatir bi'l-ma'na or conceptual mutawatir.

The Mashhur (Well-Known) Hadeeth

It is defined as a hadith which is originally reported by one, two or more Companions from the Prophet or from another Companion, but has later become well-known and transmitted by an indefinite number of people.

The hadith became widely known during the period of the Companions or the Successors.

The difference between them mutawatir and mashhur lies mainly in the fact that every link in the chain of transmitters of the mutawatir consists of a plurality of reporters, whereas the first link in the case of mashur consists of one or two Companions only. As for the remaining links in the chain of transmitters, there is no difference between the mutwatir and mashur.

The ahad (solitary) hadith

The solitary hadith (also known as khabar al-wahid) is a hadith which is reported by a single person or by odd individuals from the Prophet.

Ahad hadith do not impart positive knowledge on its own unless it is supported by extraneous or circumstantial evidence.

Ahad hadith may establish a rule of law provided that it is related by a reliable narrator and the contents of the report are not repugnant to reason.

Ahad engenders speculative knowledge, acting upon which is preferable only. In the event where supportive evidence can be found in its favor, or when there is nothing to oppose its contents, then acting upon ahad is obligatory.[28]

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[28] Most of the ahadeeth are ahad. Thus, it is unsafe to say that acting upon them is preferable. As for the lack of contradictory report, that is even applicable to mutawatir, because reconciling

Ahad may not be relied upon as the basis of belief (aqidah).[29]

Ahad may only form the basis of obligation if it fulfills the following requirements:

(I) The transmitter is a competent person, meaning that reports communicated by a child or a lunatic of whatever age are unacceptable. Women, blind persons and slaves are considered competent for purposes of reporting the hadith.

(2) The transmitter of ahad must be a Muslim. The reporter must fulfill this condition only at the time of reporting the hadith, but not necessarily at the time when he received the information.

(3) The transmitter must be an upright person ('adl) at the time of reporting the hadith. The person must not have committed a major sin and not persist in committing minor ones; nor is he known for persistence in degrading profanities, such as eating in the public thoroughfare, associating with persons of ill-repute or indulgence in humiliating jokes. This is referred to as acts which indicated a lapse in one's probity or muru'ah.

The adalah of a narrator may be established by various means including tazkiyah, that is, when at least one upright person confirms it, or when the transmitter is known to have been admitted as a witness in court, or when a faqih or a learned person is known to have relied on or acted upon his report.

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between the reports is the right approach whenever possible. You may have an abrogated verse of the Quran also. You resort to forsaking one of the proofs for another, based on the certainty of transmission, only when reconciliation is impossible.

[29] The correct position of ahl-us-Sunnah is to accept the ahad ahadeeth in all matters, and it has not been reported from the righteous generations that they made this distinction. There is an ahad hadith that prescribes seeking refuge in Allah from the fitnah of al-Maseeh al-Dajjal. If you act upon it because it pertains to practical rules, and you don't believe in al-Maseeh al-Dajjaal, then you will contradict yourself.

Tazkiya may consist of affirmation or probity (al-ta'adil) or of expunction of probity (al-jarh).

There is a difference between testimony (shahadah) and narration (riwayah).

Explanation of the grounds of the grounds of statements/allegations is required in shahadah, this is not a requirement in riwayah, nor in affirmative tazkiyah, but is a requirement in the expunction of probity (al-jarh).

The grounds of al-jarh to be ten, namely fabrication of hadith, attribution of lies to the Prophet, gross error, negligence (al-ghaflah), transgression (al-fisq) other than lying, imagery (al-wahm), ignorance (al-jahalah), heresy and pernicious innovation (al-bidah), bad memory, insertion of one's own statements in a report so that it causes confusion (tadlis al-mutun), and indulgence in outlandish reporting that goes against more reliable information.

(4) The narrator of ahad must possess a retentive memory so that his report may be trusted.

The faculty of rention, or dabt, is the ability of a person to listen to an utterance, to comprehend its meaning as it was originally intended and then to retain it and take all necessary precautions to safeguard its accuracy.

(5) The narrator should not be implicated in any form of distortion (tadlis), either in the textual contents (matn) of a hadith or in its chain of transmitters.

Tadlis in the isnad is to tamper with the names and identity of narrators, which is, essentially, not very different from outright forgery.

One form of tadlis is to omit a ink in the chain of narrators,

(6) The transmitter of ahad must have met with and heard the hadith directly from his immediate source.

The report must be free of subtle errors.

In certain hadith that are reported by a number of transmitters, there is sometimes an addition to the text of a hadith by one transmitter which is absent in the reports of the same hadith by others.

The first point to ascertain in a discrepancy is to find out whether that hadith in question was originally uttered on one and the same occasion or not. If the latter is the case, then there is no conflict and both versions may be accepted as they are. If it is established that the different versions all originated in one and the same meeting, then normally the version is variantly transmitted by one, provided that the former are not known for errors and oversight in reporting.

If the single narrator has reported the addition and is an eminently reliable person and the rest are known for careless reporting, then his version will be preferred.

The Discontinued Hadeeth (al-Hadeeth Ghayr al-Muttasil)

This is a hadith whose chain of transmitters does not extend all the way back to the Prophet.

It occurs in three varieties: *mursal, mu'dal and munqati'*.

The mursal, referred to as *munqati*, is a hadith which a Successor has directly attributed to the Prophet without mentioning the last link, namely the Companion who might have narrated it from the Prophet.

Because of the doubts in transmission, the *uluma* do not accept the *mursal*.[30]

A *mursal* transmitted by known prominent Successors are accepted, provided it fulfills the following conditions:

First, that the *mursal* is supported by another and more reliable hadith with a continuous chain of transmitters.

[30] The hanafis and malikis accept it. However, the scholars of hadeeth, who should be the reference here, don't accept it, or accept with certain conditions.

Secondly, that one *mursal* is supported by another mursal, and the latter is accepted and relied upon by the *uluma*.

Thirdly, it is in harmony with the precedent of the Companions, in which case it is elevated and attributed to the Prophet. The process is called *raf'* and the hadith is called *marfu'*.

Fourthly, the *mursal* has been approved by the *uluma* and they have relied on it.

Fifthly, that the transmitter of *mursal* has a reputation not to have reported weak and doubtful hadith.

The other two varieties of disconnected hadith are the *munqati'* and the *mu'dal*.

The *munqati'* is a hadith whose chain of narrators has a single missing link somewhere in the middle.

The *mu'dal* is a hadith in which two consecutive links are missing in the chain of its narrators.

Neither the *munqati'* nor the *mu'dal* hadiths are acceptable.

Sahih, Hasan and Da'if

The narrators of hadith have been graded into the following categories:

(I) the Companions;

(2) *thiqat thabitun*, or those who rank highest in respect of reliability next to the Companions;

(3) *thiqat*, those who are trustworthy but of a lesser degree than the first above two;

(4) *sadiq,* or truthful, are known to have committed a forgery or serious error;

(5) *saduq yahim*, truthful but committing errors;

(6) *maqbul*, accepted, implying that there is no proof to the effect that his report is unreliable;

(7) *majhul*, a narrator of unknown identity

A hadith is classified as sahih, authentic, when its narrators belong to the first three categories mentioned above.

The hasan hadith differs from the sahih in that it may include among its narrators a person(s) who belong to the fourth, fifth or sixth grades on the foregoing scale.

The weak, or da'if hadith is when a narrator does not possess the qualifications required in *sahih* or *hasan*. It is called weak owning to a weakness that exists in its chain of narrators or in its textual contents. Its narrator is known to have bad memory, or his integrity and piety has been subjected to serious doubt.

[Varieties of Da'if]

There are several varieties of da'if: *mursal, shadhdh, munkar and mudtarib, mudall, maqlub*, *mawdu*, and *matruk*.

- *Shadhdh* is a hadith with a poor isnad which is at odds with a more reliable Hadeeth.
- *Munkar* is a hadith whose narrator cannot be classified to be upright and retentive of memory.
- *Mudtarib* is a hadith whose contents are inconsistent with a number of other reports.
- *Mu'dall* is a hadith in which the narrator has quoted someone he has not met or one who lived in a distant time and place.
- *Maqlub* is a hadith in which the name of one of the narrators is substituted with another and their reports are patched up.
- The *mawdu* refers to an outright forgery
- The *matruk* refers to a report whose narrator is accused of lying and whose report is contrary to known principles.

Chapter Four: Rules of Interpretation I: Deducing the Law from its Sources

Introductory Remarks

To interpret the Qur'an or the Sunnah, it is necessary that the language of the Qur'an and the Sunnah be clearly understood. The mujtahid must obtain a firm grasp of the words of the text and their precise implications. For this, the ulama include the classification of words and their usages in usul al-fiqh.

The rules which govern the origin of words, their usages and classification are primarily determined on linguistic grounds and, as such, are not an integral part of the religion. But they are instrumental in its correct understanding.

The greater part of fiqh consists of rules which are derived through interpretation and ijtihad from text that is not self-evident. Thus, the function of interpretation is to discover the intention of the Lawgiver - or of any person for that matter - from his speech and actions.

Words have beenclassified into various types.

With reference to their conceptual clarity, the ulama of usul have classified words into the two main categories of 'clear' and 'unclear' words. The task of evaluating the precise purport of a command is greatly facilitated if one is able to ascertain the degree of clarity in which it is conveyed. Thus the manifest (Zahir) and explicit (Nass) are 'clear' words, and yet the jurist may abandon their primary meaning in favour of a different meaning as the context and circumstances may require.

Words are also classified, from the viewpoint of their scope, into homonym, general, specific, absolute and qualified. This classification basically explains the grammatical application of words to concepts: whether a word imparts one or more than one meaning, whether a word is of a specific or general import, and whether the absolute application of a word to its subject matter can be qualified and limited in scope.

From the viewpoint of their actual use, such as whether a word is used in its primary, secondary, literal,technical or customary sense, words are once again divided into the two main categories of literal (Haqiqi) and metaphorical (Majazi). The methodology of usul al-fiqh tells us, for example, that commands and prohibitions may not be issued in metaphorical terms as this would introduce uncertainty in their application. And yet there are exceptions to this, such as when the metaphorical becomes the dominant meaning of a word.

[Benefits of learning the implications of words]

1. The strength of a legal rule is to a large extent determined by the language in which it is communicated.
2. To distinguish the degrees of clarity/ambiguity in words also helps the jurist in his efforts at resolving instances of conflict in the law.
3. When the mujtahid is engaged in the deduction of rules from indications which often amount to no more than probabilities, some of his conclusions may turn out to be at odds with others. Ijtihad is therefore in need of comprehending the language of the law and the methodology with which to resolve instance of conflict in its conclusions.

Ta'wil (Allegorical Interpretation)

The ulama of usul have defined ta'wil as departure from the manifest (Zahir) meaning of a text in favour of another meaning where there is evidence to justify the departure.[4. Amidi, Ihkam, III, 53; Badran, Usul, p. 400.]

In Arabic there are two common words for 'interpretation', namely tafsir and ta'wil. The latter is perhaps closer to 'interpretation', whereas tafsir literally means 'explanation'. 'Allegorical interpretation' is an acceptable equivalent of ta'wil, but I prefer the original Arabic to its English equivalent. I propose therefore to explain the difference between tafsir and ta'wil and then to use 'ta'wil' as it is. Tafsir basically aims at explaining the meaning of a given text and deducing a hukm from it within the confines of its words.

[2. Badran, Bayan, p. 124 ff.] Ta'wil, on the other hand, goes beyond the literal meaning of words and reads into them a hidden meaning often based on speculative reasoning. The norm is that words impart their obvious meaning. All words are presumed to convey their absolute, general, and unqualified meanings unless there is reason to warrant a departure to an alternative meaning. [3. Khallaf, 'Ilm, pp. 167-68.]

Sometimes the Lawgiver or the proper legislative authority provides the necessary explanation to a legal text. This variety of explanation, known as tafsir tashri'i, is an integral part of the law. To this may be added tafsir which is based on definitive indications in the text and constitutes a necessary and logical part of it.

Beyond this, all other explanations, whether in the form of tafsir or of ta'wil, partake in the nature of opinion and ijtihad and as such do not constitute an integral part of the law.

The distinction between tafsir and ta'wil is not always clear-cut. An explanation or commentary on a legal text may partake in both.

We should also bear in mind that in the context of usul al-fiqh, especially in our discussion of the rules of interpretation, it is ta'wil rather than tafsir with which we are primarily concerned.

Ta'wil done in accordance with the conditions that ensure its propriety is generally accepted, and ulama of all ages, including the Companions, have applied it. It constitutes a valid basis for judicial decisions.

[Conditions of Proper Ta'wil]

1) Evidence to warrant its application.
2) The words of a given text are amenable to ta'wil. In this way only certain types of words, including for example the manifest (Zahir) and explicit (Nass), are open to ta'wil, but not the unequivocal (Mufassar) and the perspicuous (Muhkam). Similarly, the general ('Amm) and absolute (Mutlaq) are susceptible to ta'wil but not the specific (Khass) and qualified (Muqayyad), though they have been sometimes subjected to it.

3) The word given an allegorical interpretation must has a propensity, even if weak, in favour of it. This precludes far-fetched interpretations.
4) The person attempting ta'wil is qualified and his interpretation is in harmony with the rules of language and customary or juridical usage. Thus it would be unacceptable if the word qur' in the Qur'anic text (al-Baqarah, 2:228) were to be given a meaning other than the two meanings which it bears, namely menstruation (hayd) and the clean period between menstruations (tuhr).

There are two types of ta'wil, namely

1. ta'wil which is remote and far-fetched, and
2. 'relevant' ta'wil which is within the scope of what might be thought of as correct understanding.

An example of the first is the Hanafi interpretation of a Hadeeth which instructed a Companion, Firuz al-Daylami, who professed Islam while he was married to two sisters, to 'retain [amsik] one of the two, whichever you wish, and separate from the other'. [6. Tabrizi, Mishkat, III, 948] The Hanafis have interpreted this Hadeeth to the effect that al-Daylami was asked to contract a new marriage with one of the sisters, if they happened to have been married in a single contract of marriage, but that if they had been married in two separate contracts, to retain the one whom he married first, without a contract. [7. Amidi, Ihkam, III, 56]

On the other hand, the interpretation, which the majority of ulama have given to the phrase 'idha qumtum ila'l-salah' ('when you stand for prayers') in the Qur'anic text concerning the requirement of ablution for salah (al-Ma'idah, 5:7) to mean 'when you intend to pray' is relevant and correct; for without it, there would be some irregularity in the understanding of the text. [8. Badran, Usul, p. 402.]

To set a total ban on ta'wil, and always to try to follow the literal meaning of the Qur'an and Sunnah, which is what the Zahiris have tended to do, is likely to lead to a departure from the spirit of the law and its general purpose. It is, on the other hand,

equally valid to say that interpretation must be attempted carefully and only when necessary, for otherwise the law could be subjected to arbitrariness and abuse.

Classification I: Clear and Unclear Words

From the viewpoint of clarity (wuduh), words are divided into the two main categories of clear and unclear words.

A clear word conveys a concept which is intelligible without recourse to interpretation. A word is unclear, on the other hand, when it lacks the foregoing qualities: the meaning which it conveys is ambiguous/incomplete, and requires clarification. The clarification so required can only be supplied through extraneous evidence, for the text lacks it. A clear text, on the other hand, is self-contained, and needs no recourse to extraneous evidence.

Based on clarity and conceptual strength, clear words are divided into four types, namely

1) the manifest (Zahir) and then
2) the explicit (Nass), which commands greater clarity. This is followed by
3) the unequivocal (Mufassar) and finally
4) the perspicuous (Muhkam), which ranks highest in clarity.

And then from the viewpoint of the degree of ambiguity in their meaning, words are classified, once again, into four types.

I. 1 & 2 The Zahir and the Nass

This is a word with clear meaning, yet is open to ta'wil, primarily because the meaning is not in harmony with the context. It has a literal original meaning of its own but leaves open the possibility of an alternative interpretation. For example, the word

'lion' in the sentence 'I saw a lion' is clear enough, but it is possible, although less likely, that the speaker might have meant a brave man.[31]

When a word conveys a clear meaning that is also in harmony with the context in which it appears, and yet is still open to ta'wil, it is classified as Nass. The distinction between the Zahir and Nass mainly depends on their relationship with the context.

These may be illustrated in the Qur,anic text concerning polygamy, as follows:

And if you fear that you cannot treat the orphans justly, **then marry the women who seem good to you**, **two**, **three or four** (**al-Nisa**, **4**:**3**)

Two points constitute the principal theme of this ayah, one of which is that **polygamy is permissible**, and the other that it **must be limited to the maximum of four**. We may therefore say that **these are the explicit rulings** (Nass) of this text. **But** the **legality of marriage** between men and women is not the principal theme of this text, but only a subsidiary point. The main theme is the Nass and the incidental point is the Zahir. [11. Abu Zahrah, Usul, p. 93.]

The effect of the Zahir and the Nass is that their obvious meanings must be followed unless there is evidence to warrant recourse to ta'wil. When we say that the Zahir is open to ta'wil, it means that when the Zahir is general, it may be specified, and when absolute, it may be qualified. Similarly the literal meaning of the Zahir may be abandoned in favour of a metaphorical meaning. And finally, the Zahir is susceptible to abrogation which, in the case of the Qur'an and Sunnah, could only occur during the lifetime of the Prophet.

An example of the Zahir which is initially conveyed in absolute terms but has subsequently been qualified is the Qur'anic text (al-Nisa', 4:24) which spells out the prohibited degrees of relationship in marriage. The text then continues, 'and lawful to

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[31] When a word has a primary meaning and a secondary one, you should choose the primary unless there is an evidence, the secondary is what is meant. Ta'weel is to choose the secondary.

you are women other than these, provided you seek them by means of your wealth and marry them properly. . .' The passage preceding this ayah refers to a number of female relatives with whom marriage is forbidden, but there is no reference anywhere in this passage either to polygamy or to marriage with the paternal and maternal aunt of one's wife. The apparent or Zahir meaning of this passage, would seem to validate polygamy beyond the limit of four, and also marriage to the paternal and maternal aunt of one's wife. However, the absolute terms of this ayah have been qualified by another ruling of the Qur'an (al-Nisa', 4:3) quoted earlier which limits polygamy to four.

The other qualification to the text is provided by the Mashhur Hadeeth which forbids simultaneous marriage with the maternal and paternal aunt of one's wife.[12. Abu Dawud, Sunan (Hasan's trans.), II, 551, Hadeeth no. 2060; Khallaf, 'Ilm, p. 163; Abu Zahrah, Usul, p. 94.]

It will be noted that **Nass**, **in addition to the technical meaning has a more general meaning commonly used by the fuqaha'**, and it is: a definitive text or ruling of the Qur'an or the Sunnah. Thus it is said that this or that ruling is a nass. But Nass as opposed to Zahir denotes a word or words that convey a clear meaning, and also represents the principal theme of the text in which it occurs.

Nass, **like the Zahir**, **is open to ta'wil** and abrogation. For example, the absolute terms of the ayah on the prohibition of dead carcasses and blood have been qualified elsewhere in the Qur'an where 'blood' has been qualified as 'blood shed forth' (al-An'am, 6:145). Similarly, there is a Hadeeth which permits consumption of two types of dead carcasses, namely fish and locust. [14. Tabrizi, Mishkat, II, 1203, Hadeeth no. 4132.]

To give an example of Zahir in modern criminal law, we may refer to the word 'night' which occurs in many statutes in connection with theft. When theft is committed at night, it carries a heavier penalty. Now if one takes the manifest meaning of 'night', then it means the period between sunset and sunrise. However this meaning

may not be totally harmonious with the purpose of the law. What is really meant by 'night' is the dark of the night, which is an accentuating circumstance in regard to theft. Here the meaning of the Zahir is qualified with reference to the rational purpose of the law. [19. Cf. Khallaf, 'Ilm, p. 166.]

I. 3 & 4 Unequivocal (Mufassar) and Perspicuous (Muhkam)

Mufassar is a word or text whose meaning is completely clear and in harmony with the context. Because of this, there is no need for recourse to ta'wil. But the Mufassar may still be open to abrogation.

The idea of the Mufassar, as the word itself implies, is that the text explains itself. The Mufassar occurs in two varieties, one being the text which is self-explained, or Mufassar bidhatih, and the other is when the ambiguity in one text is clarified and explained by another. This is known as Mufassar bighayrih. [20. Abu Zahrah, Usul, p. 96]

Examples: the text in sura al-Tawbah (9:36) which addresses the believers to 'fight the pagans all together (kaffah) as they fight you all together'. The word 'kaffah' which occurs twice in this text precludes the possibility of applying specification (takhsis) to the words preceding it, namely the pagans (mushrikin). The words of a statute are often self-explained and definite so as to preclude ta'wil. But the basic function of the explanation that the text itself provides is concerned with that part of the text which is ambivalent (mujmal) and needs to be clarified. When the necessary explanation is provided, the ambiguity is removed and the text becomes a Mufassar.

An example of this is the phrase 'laylah al-qadr' ('night of qadr') in the following Qur'anic passage. The phrase is ambiguous to begin with, but is then explained: We sent it [the Qur'an] down on the Night of Qadr. What will make you realise what the Night of Qadr is like?[...] It is the night in which angels and the spirit descend [...] (al-Qadr, 97:1-4). The text thus explains the 'laylah al-qadr' and as a result, the text becomes self-explained, or Mufassar. Hence there is no need for recourse to ta'wil.

Sometimes the ambiguous of the Qur'an is clarified by the Sunnah, and when this is the case, the clarification given by the Sunnah becomes an integral part of the Qur'an. There are numerous examples of this, such as the words salah, zakah, hajj, riba.

The clear meaning of a Mufassar is not open to interpretation and unless it has been abrogated, the obvious text must be followed. But since abrogation of the Qur'an and Sunnah discontinued upon the demise of the Prophet, to all intents and purposes, the Mufassar is equivalent to the perspicuous (Muhkam), which is the last in the range of clear words and is not open to any change.

[Perceived Conflict Between Mufassar and Nass Is not Conflict]

Since Mufassar is one degree stronger than Nass, in the event of a conflict between them, the Mufassar prevails. This can be illustrated in the two Hadeeths concerning the ablution of a woman who experiences irregular menstruations that last longer than the expected three days or so: she is required to perform the salah; as for the ablution (wudu') for salah, she is instructed, according to one Hadeeth:

A woman in prolonged menstruations must make a fresh wudu' for every salah: [23. Abu Dawud, Sunan, I, 76, Hadeeth nos. 294, and 304 respectively.] And according to another Hadeeth A woman in prolonged menstruation must make a fresh wudu' at the time of every [24. Abu Dawud, Sunan, I, 76, Hadeeth nos. 294, and 304 respectively.] salah. The first Hadeeth is a Nass on the requirement of a fresh wudu' for every salah, but the second Hadeeth is a Mufassar which does not admit of any ta'wil. The first Hadeeth is not completely categorical as to whether 'every salah' applies to both obligatory and supererogatory (fara'id wa-nawafil) types of salah. Supposing that they are both performed at the same time, would a separate wudu' be required for each? But this ambiguity/ question does not arise under the second Hadeeth as the latter provides complete instruction: a wudu' is only required at the time of every salah and the same wudu' is sufficient for any number of salahs at that particular time.[25. Khallaf, 'Ilm, p. 169; Badran, Usul, p. 408.]

Words and sentences whose meaning is clear beyond doubt and are not open to ta'wil and abrogation are called Muhkam. An example of this is the frequently occurring Qur'anic statement that 'God knows all things'. This kind of statement cannot be abrogated, either in the lifetime of the Prophet, or after his demise. [26. Hughes, Dictionary of Islam, p.518; Badran, Usul, p. 406; Abu Zahrah, Usul, p.96.]

The Muhkam is, in reality, nothing other than Mufassar with one difference, namely that Muhkam is not open to abrogation.

This order of priority applies only when the two conflicting texts both occur in the Qur'an. However, when a conflict arises between, say, the Zahir of the Qur'an and the Nass of the Sunnah, the former would prevail.[32]

This may be illustrated by the ayah concerning guardianship in marriage: 'If he has divorced her, then she is not lawful to him until she marries (hatta tankiha) another man' (al-Baqarah, 2:229). This text is Zahir in respect of guardianship as its principal theme is divorce, not guardianship. From the Arabic form of the word 'tankiha' in this text, the Hanafis have drawn the additional conclusion that an adult woman can contract her own marriage, without the guardian. However there is a Hadeeth which provides that 'there shall be no marriage without a guardian (wali). [29. Abu Dawud, Sunan (Hasan's trans.), II, 555 Hadeeth no. 2078.] This Hadeeth is more specific on the point that a woman must be contracted in marriage by her guardian. Notwithstanding this, however, the Zahir of the Qur'an is given priority, by the Hanafis at least, over the Nass of the Hadeeth. The majority of ulama have, however, followed the ruling of the Sunnah. [30. Badran,Usul, p.409.]

II. Unclear Words (al-Alfaz Ghayr al-Wadihah)

[32] That is only for the Hanafis, and they didn’t always apply it. The majority gives precedence to the clearer sunnah. Their position is stronger. Afterall, that is the very function of the sunnah.

These words do not convey a clear meaning without the aid of additional evidence that may be furnished by the Lawgiver Himself or the mujtahid. If the inherent ambiguity is clarified by means of research and ijtihad, the words are classified as Khafi (obscure) and Mushkil (difficult). But when the ambiguity could only be removed by an explanation which is furnished by the Lawgiver, the word is classified either as Mujmal (ambivalent) or Mutashabih (intricate), as follows. [31. Khallaf, 'Ilm, p.162; Badran, Usul, p. 409.]

II. 1 The Obscure (Khafi)

A word with a basic meaning but is partially ambiguous in respect of some of its applications. The ambiguity needs to be clarified by extraneous evidence.

An example of Khafi is the word 'thief' (sariq) which has a basic meaning but, when applied to cases as that of a pickpocket, or a person who steals the shrouds of the dead, does not make it immediately clear whether 'thief' includes them and whether the punishment of theft can be applied to them.

The fact that the pickpocket uses a kind of skill in taking the assets of a person in wakefulness makes it somewhat different from theft. Similarly, a nabbash, that is, one who steals the shroud of the dead, since a shroud is not a guarded property (mal muhraz).

Imam Shafi'i and Abu Yusuf apply the prescribed penalty of theft to the nabbash, whereas the majority made him liable only to the discretionary punishment of ta'zir. There is also an ijtihadi opinion which authorises the application of the hadd of theft to the pickpocket. [32. Khallaf, 'Ilm, p.170]

To remove the ambiguity in Khafi is usually a matter of ijtihad, which would explain why there are divergent rulings on the foregoing examples.

II.2 The Difficult (Mushkil)

Mushkil denotes a word which is inherently ambiguous, and whose ambiguity can only be removed by means of ijtihad.

There are, for example, words which have more than one meaning. Thus the word 'qur' ' which occurs in sura al-Baqarah (2:228) is Mushkil as it has two distinct meanings: menstruation (hayd) and the clean period between two menstruations (tuhr). Imam Shafi'i and a number of other jurists adopted the latter, whereas the Hanafis and others adopted the former.

[Conflicting Texts] Sometimes conflicting texts become difficult when one attempts to reconcile them, although each may be fairly clear as they stand alone. This may be illustrated in the following two ayat: 'Whatever good that befalls you is from God, and whatever misfortune that happens to you' is from yourself' (al-Nisa', 4:79). Elsewhere we read in sura Al-'Imran (3:154): 'Say that the matter is all in God's hands.' [33]

There is no certainty as to the correct meaning of Mushkil, as it is inherently ambiguous. Any explanation which is provided by the mujtahid is bound to be speculative. [35. Khallaf, 'Ilm, p.173; Badran, Usul, p. 413.]

II.3 The Ambivalent (Mujmal)

Mujmal denotes a word or text which is inherently unclear and gives no indication as to its precise meaning. The cause of ambiguity in Mujmal is inherent in the locution itself. A word may be a homonym (mushtarak) with more than one meaning, and there is no indication as to which might be the correct one, or alternatively the Lawgiver has given it a meaning other than its literal one, or the word may be totally unfamiliar. In any of these eventualities, there is no way of removing the ambiguity without recourse to the explanation that the Lawgiver has furnished Himself, for He introduced the ambiguous word in the first place.

[33] The reconciliation here is straightforward. The scholars understand this to mean that the misfortune is caused by you, but ultimately brought about by Allah.

Words that have been used in a transferred sense, that is, for a meaning other than their literal one, in order to convey a technical or a juridical concept, fall under the category of Mujmal. For example, expressions such as salah, riba, hajj, and siyam have all lost their literal meanings. The juridical meaning of all the Qur'anic words cited above has been explained by the Prophet, in which case, they cease to be ambivalent and turn into Mufassar.

When the clarification the Lawgiver provides is insufficient to remove the ambiguity, the Mujmal turns into a Mushkil, which is then open to research and ijtihad. An example of this is the word riba, as when it reads: 'God permitted sale and prohibited riba', the last word in this text literally meaning 'increase'. The Prophet has clarified the basic concept of riba. But his explanation is insufficient for detailed purposes in that it leaves room for reflection and enquiry. [36. Badran, Usul, pp. 414-415.]

II.4 The Intricate (Mutashabih)

The meaning is a total mystery. Neither the words themselves nor the text in which they occur provide any indication as to their meaning. The Mutashabih as such does not occur in the legal nusus, but it does occur in other contexts. Some of the suras of the Qur'an begin with what is called al-muqatta'at, that is, abbreviated letters whose meaning is a total mystery. Some held the view that they are meant to exemplify the inimitable qualities of the Qur'an; that they are not abbreviations but symbols and names of God; that they have numerical significance; and that they are used to attract the attention; or they are a reminder of limitations in the knowledge of the believer, who is to realise that the unseen realities are too vast to be comprehended by reason. [37. Denffer, 'Ulum, p. 84.] Some ulema, including Ibn Hazm al-Zahiri, have held the view that with the exception of the muqatta'at there is no Mutashabih in the Qur'an. Others have maintained that the passages of the Qur'an which [38. Badran, Usul, p. 416.] Thus draw resemblances between God and man are also in the nature of

Mutashabih. The ayat which provide: 'the hand of God is over their hands' (al-Fath, 48:10), etc, are instances of Mutashabih as their precise meaning cannot be known. One can of course draw an appropriate metaphorical meaning in each case, which is what the Mu'tazilah have attempted, but this is neither satisfactory nor certain. To say that 'hand' metaphorically means power, and 'eyes' means supervision is no more than a conjecture. For we do not know the subject of our comparison. The Qur'an also tells us that 'there is nothing like Him' (al-Shura, 42:11). Since the Lawgiver has not explained these resemblances to us, they remain unintelligible.[34] [39. Khallaf, 'Ilm, p. 176.]

The existence of the Mutashabih in the Qur'an is proven by the testimony of the Book itself, which is as follows:

"He it is who has sent down to you the Book. Some of it consist of Muhkamat, which are the Mother of the Book, while others are Mutashabihat. Those who have swerving in their hearts, in their quest for sedition, follow the Mutashabihat and search for its hidden meanings. But no one knows those meanings except God. And those who are firmly grounded in knowledge say: We believe in it, the whole is from our Lord. But only people of inner understanding really heed." (Al-'Imran, 3:7).

The ulama have differed in their understanding of this ayah, particularly with regard to the definition of Muhkamat and Mutashabihat. But the correct view is that Muhkam is that part of the Qur'an which is not open to conjecture and doubt, whereas the

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[34] Ahl-us-Sunnah affirm what Allah described himself with without resemblance to His creation or imaginative descriptions. At the same time, they don't negate nor alter His description of Himself. The formula is provided by Him: 'there is nothing like Him, and He is the all hearing all-seer' (al-Shura, 42:11). The fact that humans also hear and see will not prevent us from believeing that about Him. However, since nothing is like Him, we will know for sure that His vision, sight, hand, face, etc, are certainly not like anything we can imagine.

Mutashabih is. With regard to the letters which appear at the beginning of suras, it has been suggested that they are the names of the suras in which they occur.

As for the question of whether acting upon the Mutashabih is permissible or not, there is disagreement, but the correct view is that no one may act upon it. There is no doubt that all the Mutashabihat have a meaning, but it is only known to God, and we must not impose our estimations on the words of God.[35] [41. Shawkani, Irshad, pp.31-32.]

Classification II: The 'Amm (General) and the Khass (Specific).

From the viewpoint of scope, words are classified into 'general' and 'specific'. The ulama identified certain linguistic patterns of words which assist in differentiating 'Amm from Khass.

'Amm may be defined as a word that has a single meaning[36] which applies to many things, not limited in number[37], and includes everything to which it is applicable. [42. Ghazali, Mustasfa, II, 12] An example is the word 'insan' (human being) in the ayah, 'verily the human being is in loss' (al-'Asr, 103:1), the application of 'human being' is general without any limitation.

According to the reported ijma' of the Companions, the words of the Qur'an and Sunnah apply in their general capacity unless there is evidence to warrant a departure to an alternative meaning. [43. Khallaf, 'Ilm, p. 178]

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[35] There is no speech that is completely unintelligible in the revelation. There is always a way to find the right interpretation, whether or not the particular mujtahid did. However, for the individual mujtahid, he may pause and not act upon the mutashabih until it is clarified for him. Even the abbreviated letters in the beginnings of the suras are there for the purposes mentioned here above in the main text.

[36] Differentiates the 'Amm from the homonym (Mushtarak).

[37] Precludes the Khass from the definition.

A word may be general either by its form, such as men, students, judges, etc., or by meaning only, such as people, community, etc., or by way of substitution, such as by prefixing pronouns like all, every, entire, etc., to common nouns. Thus the Qur'anic ayah which provides that 'every soul shall taste of death' (Al-'Imran, 3: 185), is general in its import.

[Khass] When a word is applied to a limited number of things, including everything to which it can be applied, say one or two or a hundred, it is referred to as 'specific' (Khass). A word of this kind may denote particular individual such as Ahmad, or Zayd, or an individual belonging to a certain species such as a horse or a bird, or an individual belonging to a genus such as a human being. As opposed to the general, the specific word applies to a limited number, be it a genus, or a species, or a particular individual.

Legal rules which are conveyed in specific terms are definite in application and are normally not open to ta'wil. Thus the Qur'anic ayah which enacts the 'feeding of ten poor persons' as the expiation for futile oaths is definite in that the number 'ten' does not admit any ta'wil.

However, if there be exceptional reasons to warrant recourse to ta'wil, then the Khass may be open to it. For example, the requirement to feed ten poor persons in the foregoing ayah has been interpreted by the Hanafis as either feeding ten persons or one such person ten times. The Hanafis have, however, been overruled by the majority on this point.

In determining the scope of 'Amm, reference is made not only to the rules of the language but also to the usage of the people, and should there be a conflict between the two priority is given to the latter.

[Types of ‘Amm]

It appears that there are three types of 'Amm, which are a follows:

Firstly, the 'Amm which is absolutely general. Note for example the ayat, 'there is no living creature on earth [wa ma min dabbatin fi'l-ard] that God does not provide for'

(Hud, 11:6) In the ayah, the prefix 'ma min' ('no one', 'no living creature'), is an expression which identifies the 'Amm.

Secondly, there is the 'Amm which is meant to imply a Khass. An example of this is the word 'al-nas' ('the people') in the Qur'anic ayah, 'pilgrimage to the House is a duty owed to God by all people who are able to undertake it' (Al-'Imran, 3:97). Here the the text implies that children and lunatics or anyone who cannot afford to perform the required duty are not included.

Thirdly, there is the 'Amm which is not accompanied by either of the foregoing two varieties of indications. An example of this is the Qur'anic word almutallaqat ('divorced women') in the text which provides that 'divorced women must observe three courses upon themselves' (al-Baqarah, 2:228). This type of 'Amm is Zahir in respect of its generality. However, there is another in sura al-Ahzab (33:49) it says: 'O believers! When you enter the contract of marriage with believing women and then divorce them before consummating the marriage, they do not have to observe any 'iddah'. In this way, women who are divorced prior to consummating the marriage are excluded from the general requirement of the first ayah. The second ayah, in other words, specifies the first. [47. Badran, Usul, pp. 386-387]

[Linguistic forms of ‘Amm]

'Amm in its Arabic usage takes a variety of identifiable forms. I shall only attempt to explain some of the well-known patterns of 'Amm.

1. When a singular or a plural form of a noun is preceded by the definite article al it is identified as 'Amm. For example the Qur'anic text which provides, 'the adulterer, whether a woman or a man, flog them one hundred lashes' (al-Nur, 24:2). Here the article al preceding 'adulterer' (al-zaniyah wa'l-zani) indicates that all adulterers must suffer the prescribed punishment.

2. Similarly, when the plural form of a noun is preceded by al, it is identified as 'Amm. The example that we gave above relating to the waiting period of the divorced women (al-mutallaqat) is a case in point.
3. The Arabic expressions jami', kaffah and kull ('all', 'entire'), are generic in their effect, and when they precede or succeed a word, the latter comprises all to which it is applicable.
4. Similarly, when a word, usually a plural noun, is prefixed by a conjunctive such as walladhina ('those men who') and wallati ('those women who'), it becomes generic in its effect. An example of this in sura al-Nur (24:21): 'Those who [walladhina] accuse chaste women of adultery and fail to bring four witnesses, flog them eighty lashes.' This ruling is general until proven otherwise. However, it has been specified by a subsequent ayah which makes an exception in the case of the husband who is allowed to prove a charge of adultery by taking four solemn oaths instead of four witnesses, but she can rebut the charge by four solemn oaths (al-Nur, 24:6).
5. An indefinite word (al-nakirah) when used to convey the negative is also generic in effect. For instance the Hadeeth la darar wa la dirar ('no harm shall be inflicted or reciprocated) is general in its import.
6. The word 'man' ('he who') is specific in its application, but when used in a conditional speech, it has the effect of a general word. To illustrate this in the Qur'an, we may refer to the text which provides: 'Whoever [wa-man] kills a believer in error, must release a believing slave' (al-Nisa', 4:92)

[Is ‘Amm Definitive?]

There is general agreement to the effect that the Khass is definitive (qat'i) in its import, but the ulama have differed as to whether the 'Amm is definitive or speculative (zanni).

According to the Hanafis, the application of 'Amm to all that it includes is definitive, the reason being that the language of the law is usually general.[49. Shatibi, Muwafaqat, III, 153]

The majority, including the Shafi'is, Malikis and Hanbalis, maintain that the application of 'Amm to all that it includes is speculative as it is open to limitation and ta'wil.

The result of this disagreement becomes obvious in the event of a conflict between the 'Amm of the Qur'an and the Khass of the Hadeeth, especially the weak or the solitary Hadeeth.[38] According to the majority, a solitary Hadeeth may specify a general provision of the Qur'an [50. Abu Zahrah, Usul, p.125] To the Hanafis, however, the 'Amm of the Qur'an is definite, and the solitary Hadeeth, or qiyas for that matter, is speculative.

The two views may be illustrated with reference to the Qur'anic text concerning the slaughter of animals, which provides 'eat not [of meat] on which God's name has not been pronounced' (al-An'am, 6: 121). In conjunction with this general ruling, there is a solitary Hadeeth which provides that 'the believer slaughters in the name of God whether he pronounces the name of God or not'. [51. Bayhaqi, Al-Sunan al-Kubra, VII, 240] According to the majority, this Hadeeth specifies the ayah, with the result that slaughter by a Muslim, even without pronouncing the name of God, is lawful for consumption. But to the Hanafis, it is not lawful.

According to the Hanafis, however, an independent locution can specify another locution only if it is established that the two locutions are chronologically parallel to one another. but if they are not so parallel, the later in time abrogates the former.[39]In the

[38] There is a huge difference between the weak and solitary hadeeths. Combining them in a statement like this may have inaccurate inferences.

[39] They, also, don't believe that the Sunnah may abrogate the Quran.

event where the qualifying words relate to what has preceded and do not form a complete locution by themselves, they are not regarded as independent propositions.

[Takhsees by a clause in the same text]

According to the majority, but not the Hanafis, a dependent clause may qualify a general proposition by introducing an exception (istithna'), a condition (shart), a quality (sifah), or indicating the extent (ghayah) of the original proposition.

An example of specification in the form of istithna' is the general ruling which prescribes documentation of commercial transactions that involve deferred payments in sura al-Baqarah (2:282). This general provision is then followed, in the same ayah, by the exception 'unless it be a transaction handled on the spot that you pass around among yourselves'.

Specification (takhsis) in the form of a condition (shart) to a general proposition: Allah says, 'in what your wives leave, you are entitled to one half if they have no children' (al-Nisa' , 4:12). The application of the general rule in the first portion of the ayah has thus been qualified by the condition which the text itself has provided in its latter part, namely the absence of children.

Takhsis by way of providing a description or qualification (sifah) to a general proposition: Allah says, '[and forbidden to you are] your step-daughters under your guardianship from your wives with whom you have consummated the marriage' (al-Nisa', 4:23). The general prohibition in the first part of the ayah has been qualified by the description “with whom you have consummated the marriage”.

Takhsis in the form of ghayah, or specifying the extent of application of a general proposition: Allah says regarding wudu, 'washing of your hands up to the elbows' (al-Ma'idah, 5:6). Washing the hands, which is a general ruling, is thus specified in regard to the area which must be covered in washing. [53. Khallaf, 'Ilm, p.187]

[Takhsees by a clause in a separate text]

When the application of a general proposition is narrowed down, not by a clause which is part of the general locution itself, but by an independent locution, the latter may consist of a separate text, or of a reference to the general requirements of reason, social custom, or the objectives of Shari'ah (hikmah altashri').

It is by virtue of reason, for example, that infants and lunatics are excluded from the scope of the obligation of hajj.

Similarly, the general text of the Qur'an which reads that '[a wind] will destroy everything by the ommand of its Lord' (al-Ahqaf, 46:25), customarily denotes everything which is capable of destruction.

Similarly, in the area of commercial transactions, the general provisions of the law are often qualified in the light of the custom prevailing among people.

We have already illustrated specification of one text by another in regard to the waiting period ('iddah) of divorced women.

And lastly, the general provision of the Qur'an concerning retaliation in injuries on an 'equal for equal' basis (al-Ma'idah, 5:48) is qualified in the light of the objectives of the Lawgiver in the sense that the offender is not to be physically wounded in the manner that he injured his victim, but is to be punished in proportion to the gravity of his offence.

Chronological order between the general and the specifying provisions.

According to the Hanafis, takhsis can only take place when the 'Amm and the Khass are chronologically parallel to one another; in cases where this order cannot be established between them, they are presumed to be parallel. However, when the specifying clause is of a later origin than the general proposition, the former abrogates the latter.

The difference between abrogation and takhsis is that abrogation consists of a total or partial suspension of a ruling at a later date, whereas takhsis essentially limits the application of the 'Amm.

To the majority of ulama takhsis is a form of explanation (bayan), but to the Hanafis it is a form of bayan only when the specifying clause is independent of the general proposition, chronologically parallel to it, and is of the same degree of strength as the 'Amm in respect of being a qat'i or a zanni. [55. Badran, Usul, p. 376.]

The effect of 'Amm is that it remains in force, and action upon it is required, unless there is a specifying clause which would limit its application. In the event where a general provision is partially specified, it still retains its legal authority in respect of the part which remains unspecified.

[‘Amm after takhsees not definitive, even by Hanafis]

According to the majority of ulema, the 'Amm is speculative as a whole, whether before or after takhsis, and as such it is open to qualification and ta'wil in either case. For the Hanafis, however, the 'Amm is definitive in the first place, but when it is partially specified, it becomes speculative in respect of the part which still remains unspecified; hence it will be treated as zanni and would be susceptible to further specification by another zanni. [59. Khallaf, 'Ilm, p. 183]

[The cause never specifies a general ruling]

As for the question of whether the cause of a general ruling can operate as a limiting factor in its general application, it will be noted that the cause never specifies a general ruling. This is relevant, as far as the Qur'an is concerned, to the question of asbab al-nuzul, or the occasions of its revelation. One often finds general rulings in the Qur'an which were revealed with reference to specific issues. Whether the cause of the revelation contemplated a particular situation or not, it does not operate as a limiting factor on the application of the general ruling.

The actual wording of a general ruling is therefore to be taken into consideration regardless of its cause.

Conflict between 'Amm and Khass Should there be two textual rulings on one and the same subject in the Qur'an, one being 'Amm and the other Khass, there will be a

case of conflict between them according to the Hanafis, but not according to the majority. The reason is that to the Hanafis, 'Amm and Khass are both definitive (qat'i). The Hanafis maintain that in the event of a conflict between the general and the specific in the Qur'an, one must ascertain the chronological order between them first. If the two happen to be parallel in time, the Khass specifies the 'Amm. If a different chronological sequence can be established between them, then if the 'Amm is of a later origin, it abrogates the Khass, but if the Khass is later, it only partially abrogates the 'Amm.

The majority of ulema, as already noted, do not envisage the possibility of a conflict between the 'Amm and the Khass: when there are two rulings on the same point, one being 'Amm and the other Khass, the latter becomes explanatory to the former. For the majority, the 'Amm is like the [62.Abu Zahrah, Usul, p. 131]

The two foregoing approaches to takhsis may be illustrated by the conflict arising in the following two aHadeeth concerning legal alms (zakah). One of these provides, 'whatever is watered by the sky is subject to a tithe'. The second Hadeeth provides that 'there is no charity in less than five awsaq'. [63. Al-Tabrizi, Mishkat, I, 563-65, Hadeeth nos. 1794 & 179] A wasaq (sing. of awsaq) is a quantitative measure equivalent to about ten kilograms. The majority of ulama have held that the second Hadeeth explains and qualifies the first. For the Hanafis, however, the first Hadeeth abrogates the second, as they consider that the first Hadeeth is of a later origin. The two views remain far apart, and there is no meeting ground between them. However, as already indicated, the majority opinion is sound, and recourse to abrogation in cases of conflict between the 'Amm and Khass is often found to be unnecessary.

Classification III: The Absolute (Mutlaq) and the Qualified (Muqayyad)

Mutlaq denotes a word which is neither qualified nor limited in its application. When we say, for example, a 'book', a 'bird' or a 'man', each one is a generic noun which applies to any book, bird or man.

The Mutlaq differs from the 'Amm, however, in that the latter comprises all to which it applies whereas the former can apply to any one of a multitude, but not to all. [65. Khallaf, 'Ilm, p. 192] To some ulema, including al-Baydawi, the Mutlaq resembles the 'Amm, and the Muqayyad resembles the Khass. [66. Ansari, Ghayat al-Wusul, p. 84.]

When the Mutlaq is qualified by another word or words it becomes a Muqayyad, such as qualifying 'a book' as 'a green book'.

The Muqayyad differs from the Khass in that the former is a word which implies an unspecified individual/s who is merely distinguished by certain attributes and qualifications.

An example of Mutlaq in the Qur'an is the expiation (kaffarah) of futile oaths, which is freeing a slave (fa-tahriru raqabatin) in sura al-Ma'idah, (5:92). The command in this text is not limited to any kind of slaves. Yet in another Qur'anic passage the expiation of erroneous killing consists of 'freeing a Muslim slave' (fa-tahriru raqabatin mu'minatin) (al-Nisa', 4:92). In contrast to the first text, the command in the second is qualified in that the slave to be released must be a Muslim.

The Mutlaq remains absolute in its application unless there is a limitation to qualify it. Thus the Qur'anic prohibition of marriage 'with your wives' mothers' in sura al-Nisa' (4:23) is conveyed in absolute terms, and as such, marriage with one's mother-in-law is forbidden regardless as to whether the marriage with her daughter has been consummated or not.

But when a Mutlaq is qualified into a Muqayyad, the latter is to be given priority. Thus if we have two texts on one and the same subject, and both convey the same ruling (hukm) as well as having the same cause (sabab) but one is Mutlaq and the other Muqayyad, the latter prevails over the former.

To illustrate this in the Qur'an, we refer to the two ayat on the prohibition of blood for human consumption. The first provides, 'forbidden to you are the dead carcass and

blood' (al-Ma'idah, 5:3). But elsewhere in the Qur'an there is another text on the same subject which qualifies the word 'blood' as **'blood shed forth'** (daman masfuhan) (al-An'am, 6:145). This second ayah prevails.

Different rulings and causes

However if there are two texts on the same issue, one absolute and the other qualified, but they differ with one another in their rulings and in their causes, or in both, then neither is qualified by the other and each will operate as it stands. This is the view of the Hanafi and Maliki schools, and the Shafi'is concur insofar as it relates to two texts which differ both in their respective rulings and their causes. However they maintain the view that if the two texts vary in their ruling (hukm) but have the same cause in common, the Mutlaq is qualified.

Different causes same rulings

Ex: The **two ayat concerning ablution**, 'wash your faces and your hands [aydikum] up to the elbows' (al-Ma'idah, 5:7). The second occurs in regard to **tayammum**, 'take clean sand/earth and wipe your faces and your hands' (al-Nisal, 4:43). The word 'aydikum' (your hands) is Muqayyad in the first text but Mutlaq in the second. The two texts have the same cause: cleanliness for salah. The second is therefore qualified by the first, and the Muqayyad prevails. Consequently in wiping the hands in tayammum, one is required to wipe up to the elbows.

Same ruling but different causes

Ex: The **two ayat on the subject of witnesses**. 'and bring **two witnesses** from among your men' (al-Baqarah, 2:282). The second text on same subject of witnesses, conveys a qualified command when it provides ‘and bring **two just witnesses** [when you revoke a divorce]' (al-Talaq, 65:2). The cause of the first text is commercial transactions which must accordingly be testified to by two men; whereas the cause of the second ruling is the revocation of talaq. The latter prevails over the former.

Consequently, witnesses in both commercial transactions and the revocation of talaq must be upright and just. [68. Badran, Usul, p.354.]

[The hanafi Position]

The foregoing basically represents the majority opinion. The Hanafis basically recognise only one case where the Muqayyad qualifies the Mutlaq, namely when both convey the same ruling and have the same cause in common. In this way the Hanafis do not agree with the majority in regard to the qualification of the area of the arms to be wiped in tayammum by the same terms which apply to ablution by water (wudu'). They argue that tayammum is is a concession, and the spirit of concession should prevail in the determination of the to be wiped. [69. Khallaf, 'Ilm, pp. 193-194.]

Classification IV: The Literal (Haqiqi) and the Metaphorical (Majazi)

A word may be used in its literal sense, that is, for its original or primary meaning, or it may be used in a secondary and metaphorical sense. [70. Badran, Usul, p. 394.]

There is normally a logical connection between the literal and metaphorical meanings of a word. Words are normally used in their literal sense, and in the language of the law it is the literal meaning which is relied upon most. When, for example, a person says in his will that 'I bequeath my property to 'my offspring (awlad)', it primarily means sons and daughters, not grandchildren. For applying 'awlad' to 'grandchildren' is a metaphorical usage which is secondary to its original meaning. [72. Badran, Usul, p. 395]

Both the Haqiqi and the Majazi occur in the Qur'an. Thus when we read in the Qur'an to 'kill not [la taqtulu] the life which God has made sacrosanct', 'la taqtulu' carries its literal meaning.

Similarly the Majazi occurs frequently in the Qur'an. When, for example, we read in the Qur'an that 'God sends down your sustenance from the heavens' (Ghafir, 40:13), this means rain which causes the production of food. Some ulama have observed that

Majazi is in the nature of a homonym which could comprise what may be termed as falsehood or that which has no reality and truth, and that falsehood has no place in the Qur'an. Imam Ghazali discusses this argument in some length and represents the majority view when he refutes it and acknowledges the existence of the Majazi in the Qur'an. The Qur'anic expression, for example, that 'God is the light of the heavens and the earth' (al-Nur, 24:35) and 'whenever they [the Jews] kindled the fire of war, God extinguished it' (al-Ma'idah, 5:67) [73. Ghazali, Mustasfa, 67-78.]

In the event where a word has both a literal and a metaphorical meaning and the latter is well-established and dominant, it is likely to prevail over the former. Some ulama have, however, held the opposite view, namely that the Haqiqi would prevail in any case; and according to yet a third view, both are to be given equal weight. But the first of these views represents the view of the majority. To give an example, the word 'talaq' literally means 'release' or 'removal of restriction' (izalah al-qayd). But since the juridical meaning of talaq, which is divorce, has become totally dominant, it is this meaning that is most likely to prevail. [74. Hitu, Wajiz, p. 115.]

[linguistic (lughawi), customary (urfi) and juridical (shar'i) usages of words]

The Haqiqi is sub-divided, according to the context in which it occurs, into linguistic (lughawi), customary (urfi) and juridical (shar'i).

The linguistic Haqiqi is a word which is used in its dictionary meaning, such as 'lion' for that animal.

The customary Haqiqi occurs in the two varieties of general and special: when a word is used in a customary sense and is common among people, the customary Haqiqi is classified as general, that is, in accord with the general custom. An example of this in Arabic is the word 'dabbah' which in its dictionary meaning applies to all living beings that walk on the face of the earth, but which has been assigned a different meaning by general custom, that is, an animal walking on four legs. But when the customary Haqiqi is used for a meaning that is common to a particular profession or group, the customary

Haqiqi is classified as special, that is, in accord with a special custom. For example the Arabic word raf' ('nominative') and nasb ('accusative') have each acquired a technical meaning that is common among grammarians.

The juridical Haqiqi: some ulama consider this to be a variety of the Majazi, but having said this, the juridical Haqiqi is defined as a word which is used for a juridical meaning that the Lawgiver has given it in the first place, such as 'salah', which literally means 'supplication' but which, in its well-established juridical sense, is a particular form of worship.[75. Badran, Usul, p.394; Hitu,Wajiz, p. 112 .]

The Majazi has also been divided into linguistic, customary and juridical varieties.

The Haqiqi and Majazi are divided into plain (Sarih) and allusive (Kinayah). If the application of a word is such that it clearly discloses the speaker's intention, it is plain, otherwise it is allusive. The highest degree of clarity in expression is achieved by the combination of the plain (Sarih) and the literal (Haqiqi) such as the sentence 'Ahmad bought a house'. The plain may also be combined with the metaphorical, as in the sentence 'I ate from this tree'. The 'allusive' or Kinayah does not clearly disclose the intention of its speaker. It can occur in combination with the literal or the metaphorical. When a person wishes, for example, to confide in his colleague in front of others, he might say 'I met your friend and spoke to him about the matter that you know'. This is a combination of the literal and the allusive in which all the words used convey their literal meanings but where the whole sentence is allusive in that it does not disclose the purpose of the speaker with clarity.

Supposing that a man addresses his wife and tells her in Arabic 'i'taddi' (start counting) while intending to divorce her. This utterance is allusive, as 'counting' literally means taking a record of numbers, but is used here in reference to counting the days of the waiting period of 'iddah. This speech is also metaphorical in that the 'iddah which is caused by divorce is used as a substitute for 'divorce'. It is a form of Majazi in

which the effect is used as a substitute for the cause.[76. Abdur Rahim, Jurisprudence, pp. 94-97]

Legal matters which require certainty, such as offences entailing the hadd punishment, cannot be established by language which is not plain. For example when a person confesses to such offences in allusive words, he is not liable.[78. Abdur Rahim, Jurisprudence, p. 98.]

The Homonym (Mushtarak)

A homonym is a word which has more than one meaning. Some ulema, including al-Shafi'i, have held the view that the homonym is a variety of 'Amm. The two are, however, different in that the homonym inherently possesses more than one meaning, which is not necessarily the case with the 'Amm. An example of the Mushtarak in Arabic is the word "ayn' which means several things, including eye, water-spring, gold, and spy.

When Mushtarak occurs in the Qur'an or Sunnah, **it denotes one meaning alone**, not more than one. **The Shafi'is and some Mutazilah** have taken exception to this view as they maintain that **in the absence of any indication in support of one of the meanings**, **both or all may be upheld** simultaneously provided that they do not contradict one another. According to a variant view, however, plurality of meanings on a simultaneous basis is permissible in negation or denial (nafy) but not in affirmation and proof (ithbat). If, for example, Ahmad says 'I did not see a 'ayn (ma ra'aytu 'aynan)', 'ayn in this negative statement could comprise all of its various meanings. But if Ahmad says 'I saw a 'ayn', than 'ayn in this statement must be used for only one of its several meanings.[81. Shawkani, Irshad, p. 21]

The rule in regard to commands and prohibitions of the Shari'ah is that the Lawgiver does not intend to uphold more than one of the different meanings of a homonym at any given time. To illustrate the homonym in the context of a prohibitory order in the Qur'an we refer to the word 'nakaha' in sura al-Nisa' (4:22) which reads,

'and marry not women whom your fathers had married (ma nakaha aba'ukum)'. 'Nakaha' is a homonym which means both marriage and sexual intercourse. The Hanafis, the Hanbalis, al-Awza'i and others have upheld the latter, whereas the Shafi'is and the Malikis have upheld the former meaning of nakaha. According to the first view, a woman who has had sexual intercourse with a man is forbidden to his children and grandchildren; a mere contract of marriage, without consummation, would thus not amount to a prohibition in this case. [83. Badran, Bayan, pp. 103-104.] The Mushtarak is in the nature of Mushkil (difficult) and it is for the Mujtahid to determine its correct meaning by means of research and ijtihad; it is his duty to do so in the event where Mushtarak constitutes the basis of a judicial order .[84. Abu Zahrah, Usul, p.133]

Chapter Five: Rules of Interpretation II: Al-Dalalat (Textual Implications)

The law normally requires compliance not only with the obvious meaning of its text but also with its implied meaning.

The ulama of usul have distinguished several shades of meaning that a nass may be capable of imparting. The Hanafi jurists distinguished four levels in an order which begins with the explicit meaning. Next is the 'alluded' meaning which is followed by the 'inferred' meaning, and lastly the 'required'. There is yet a fifth variety, namely the 'divergent' meaning, which is somewhat controversial.

The explicit meaning (ibarah al-nass) is the dominant and most authoritative meaning.

In addition to its obvious meaning, a text may impart a meaning which is indicated by the signs and allusions that it might contain. This secondary meaning is referred to as isharah al-nass, that is the alluded meaning.

A legal text may also convey a meaning which may not have been indicated by the words or signs and yet is a complementary meaning which is warranted by the logical and juridical purport of the text. This is known as dalalah al-nass, or the inferred meaning, which is one degree below the alluded meaning [according to the Hanafis] by virtue of the fact that it is essentially extraneous to the text.

Next in this order is the iqtida' al-nass, or the required meaning, which is once again a logical and necessary meaning without which the text would remain incomplete.[1. Badran, Usul, p. 417.]

Priority is given to the first, then second then third and then fourth.

I. The Explicit Meaning (Ibarah al-Nass)

This is the immediate meaning of the text derived from its obvious words. It represents the principal theme and purpose of the text. To illustrate, we refer to the Qur'anic passage on the subject of polygamy, a text which conveys more than one

meaning, as follows 'And if you fear that you may be unable to treat the orphans fairly, then marry of the women who seem good to you, two, three or four. But if you fear that you cannot treat [your co-wives] equitably, then marry only one. . .' (al-Nisa', 4:3). At least three or four meanings are distinguishable in this text which are:

first, the legality of marriage;

second, limiting polygamy to the maximum of four;

third, remaining monogamous if polygamy may be feared to lead to injustice; and

fourth, the requirement that orphaned girls must be accorded fair treatment.

All of these are conveyed in the actual words and sentences of the text. But the first and the last are subsidiary and incidental whereas the second and the third represent the explicit themes and meanings of the text, that is, the 'ibarah alnass. Limiting polygamy to the maximum of four is the explicit meaning which takes absolute priority over all the implied and incidental meanings that this text might convey.[40] [2. Khallaf, 'Ilm, p. 145.]

The effect of 'ibarah al-nass is that it conveys a definitive ruling hukm qat'i[41] on its own and is in no need of corroborative evidence. But if the text is conveyed in general terms, it may be susceptible to qualification, in which case it may not impart a definitive rule of law but a speculative (zanni) evidence only. [3. Badran, Usul, pp. 419-420; Khudari, Usul, p. 119.]

II. The Alluded Meaning (Isharah al-Nass)

Undestood from the wording, but it is not the main theme of the text. It may be easily detectable in the text, or reached through ijtihad.

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[40] Despite this, the verse is not definitive in forbidding marriage to more than four. It is established here via the divergent implication.

[41] Here he talks about the ruling being definitive, not the proof.

Example: the text concerning the maintenance of young children:

'It is his [father's] duty to provide them with maintenance and clothing according to custom' (**al-Baqarah**, **2**:**233**).

The **explicit** meaning of this text obviously determines that **it is the father's duty to support** his child. It is **also understood from the wording** of the text, especially from the use of the pronoun 'lahu' (his) **that only the father and no-one else bears this obligation**. But **to say that the child's descent is solely attributed to the father** is a rational and concomitant meaning which is derived through further investigation of the signs that are detectable in the text.[4. Abu Zahrah, Usul, p. 111] Similarly, the rule that the father, when in dire need, may take what he needs of the property of his offspring without the latter's permission is yet another meaning which is derived by way of isharah al-nass.

The effect of isharah al-nass is similar to that of 'ibarah al-nass in that both constitute the basis of obligation, unless there is evidence to suggest otherwise. To illustrate this, we may refer once again to the Qur'anic text (al-Baqarah, 2:233) which laid down the rule that the child follows the descent of his father. This is a definitive ruling (hukm qat'i). [7. Badran, Usul, p. 421.]

III. The Inferred Meaning (Dalalah al-Nass)

This is a meaning which is derived from the spirit and rationale of a legal text even if it is not indicated in its wording. Unlike the explicit and alluded meanings which are indicated in the words and signs of the text, the inferred meaning is instead derived through analogy and the identification of a common effective cause ('illah) between it and the explicit meaning. This might explain why some ulama equated it with analogical deduction, namely qiyas jali.

Ex: concerning the property of orphans, the Quran says that 'those who unjustly devour the property of the orphans only devour fire into their bodies' (al-Nisa', 4:10).

By way of inference the same prohibition is extended to other forms of destruction and waste which might have been caused, for example, through financial mismanagement that does not involve personal gain and yet leads to the loss.

As already stated, this kind of inference is equivalent to what is known as obvious analogy (qiyas jali) which consists of identifying the effective cause of a textual ruling, and analogically extending the ruling to all similar cases. [9. Khallaf, 'Ilm, p. 150.]

IV. The Required Meaning (Iqtida' al-Nass)

This is a meaning on which the text itself is silent and yet which must be read into it if it is to fulfill its proper objective.

Ex: the Qur'an proclaims concerning the prohibited degrees of relations in marriage:

'unlawful to you are your mothers and your daughters . . .' (al-Nisa', 4:22).

This text does not mention the word 'marriage', but even so it must be read into the text to complete its meaning.

To give a slightly different example of iqtida' al-nass, we may refer to the Hadeeth which provides:

"**There is no fast (la siyama) for anyone who has not intended it from the night before**."

The missing element could either be that the fasting is 'invalid' or that it is 'incomplete'. The Hanafis have upheld the latter whereas the Shafi'is have read the former meaning into this Hadeeth. [10. Ibn Majah, Sunan, I, 542, Hadeeth no. 1700]

[Order of Priority]

In the event of a conflict between the 'ibarah al-nass and the isharah al-nass, the former prevails. This may be illustrated by a reference to the two ayat concerning the punishment of murder:

1. **'retaliation is prescribed for you in cases of murder'** (**al-Baqarah**, **2**:**178**).
2. **'Whoever deliberately kills a believer**, **his punishment will be permanent hellfire'** (**al-Nisa'**, **4**:**93**).

The explicit meaning of the first provides that the murderer must be retaliated against; the explicit meaning of the second ayah is that the murderer is punished with permanent hellfire. The alluded meaning of the second ayah is that retaliation is not a required punishment for murder; instead the murderer will, according to the explicit terms of this ayah be punished in the hereafter. There is between the explicit meaning of the first and the alluded meaning of the second. But since the first ruling constitutes the explicit meaning of the text and the second is an alluded meaning, the former prevails over the latter. [11. Abu Zahrah, Usul, p.115]

To illustrate the conflict between the alluded meaning and the inferred meaning, we refer firstly to the Qur'anic text on the expiation of erroneous homicide:

'The expiation (**kaffarah**) **of anyone who erroneously kills a believer is to set free a Muslim slave'** (**al-Nisa'**, **4**:**92**).

The explicit meaning of this ayah is that erroneous homicide must be expiated by releasing a Muslim slave. By way of inference, it is further understood that freeing a Muslim slave would also be required in intentional homicide. The inferred meaning derived in this way is that the murderer is liable, at least, to the same kaffarah which is required in erroneous homicide. However, according to the next ayah in the same passage:

'Whoever deliberately kills a believer, **his punishment is permanent hellfire'** (**al-Nisa'**, **4**:**93**).

The alluded meaning of this text is that freeing a slave is not required in intentional killing. Because murder is an unpardonable sin, and as such there is no room for

kaffarah in cases of murder. This is the alluded meaning of the second ayah; and a conflict arises between this and the inferred meaning of the first ayah. The alluded meaning, which is that the murderer is not required to pay a kaffarah, takes priority over the inferred meaning that renders him liable to payment. [13. Badran, Usul, p. 429] The Shafi'is are in disagreement with the Hanafis on the priority of the alluded meaning over the inferred meaning. According to the Shafi'is, the inferred meaning takes priority. The is because the former is founded in both the language and rationale of the text whereas the latter is not; that the alluded meaning is only derived from a sign. It is on the basis of this analysis that, in the foregoing example, the Shafi'is deem that the murderer is also required to pay the kaffarah. [14. Abu Zahrah, Usul, p.115.]

V. Divergent Meaning (Mafhum al-Mukhalafah) and the Shafi'i Classification of al-Dalalat

The basic rule [according to the Hanafis] to be stated at the outset here is that a legal text never implies its opposite meaning. If a legal text is at all capable of imparting a divergent meaning, then there needs to be a separate text to validate it. This argument has been more forcefully advanced by the Hanafis, who are basically of the view that mafhum al-mukhalafah is not valid.[15. Khallaf, 'Ilm, p.153.]

Having said this, however, mafhum al-mukhalafah is upheld on a restrictive basis not only by the Shafi'is but even by the Hanafis; they have both laid down certain conditions to ensure the proper use of this method.

Mafhum al-mukhalafah may be defined as a meaning which is derived from the words of the text in such a way that it diverges from the explicit meaning thereof. [16. Hitu, Wajiz, p. 125.]

Ex: the Qur'an proclaims the general permissibility (ibahah) of foodstuffs for consumption with a few exceptions specified in the following text:

'Say, I find nothing in the message that is revealed to me forbidden for anyone who wishes to eat except the dead carcass and blood shed forth' (daman masfuhan) (al-An'am, 6:145).

Would it be valid to suggest that blood which is not shed forth (dam ghayr masfuh) is lawful? The answer to this question is in the negative. For otherwise the text's interpretation will most likely oppose its obvious meaning. As for the permissibility of unspilt blood such as liver and spleen, which consist of clotted blood, this is established, not by a Hadeeth of the Prophet which proclaims that 'lawful to us are two types of corpses and two types of blood. These are the fish, the locust, the liver and the spleen.[17. Tabrizi, Mishkat, II, 203, Hadeeth no. 4132]

The Shafi'is adopted a different approach to mafhum al-mukhalafah. But to put this matter in its proper perspective, we would need to elaborate on the Shafi'i approach to textual implications (al-dalalat') as a whole.

[Shafi'i approach to textual implications (al-dalalat')]

The Shafi'is initially divided al-dalalat into the two main varieties:

dalalah al-mantuq (pronounced meaning) and

dalalah almafhum (implied meaning).

Both are derived from the words. But, the latter through logical and juridical construction.

[dalalah al-mantuq (pronounced meaning)]

Example of dalalah al-mantuq is the ayah which proclaims that

'God has permitted sale and prohibited usury' (al-Baqarah, 2:275).

It clearly speaks of the legality of sale and prohibition of usury.

Dalalah al-mantuq has in turn been subdivided into two types, namely

1. dalalah al-iqtida (required meaning), and
2. dalalah al-isharah (alluded meaning).

Both are indicated in the words or constitute a necessary part of its meaning. From this description, the difference between the Shafi'i and Hanafi approaches is more formal than real. [18. Khudari, Usul, pp. 121-122]

In this way all of the four-fold Hanafi divisions of al-dalalat can be classified under dalalah al-mantuq. [19. Abu Zahrah, Usul, p. 116.]

[Dalalah al-mafhum]

Dalalah al-mafhum is an implied meaning which is not indicated in the text but is arrived at by way of inference. This is to a large extent concurrent with what the Hanafis have termed dalalah al-nass. But the Shafi'is have more to say on dalalah al-mafhum in that they sub-divide this into the two types:

1. mafhum al-muwafaqah (harmonious meaning) and
2. mafhum al-mukhalafah (divergent meaning).

The former is in harmony with the pronounced meaning of the text. This harmonious meaning (mafhum al-muwafaqah) may be equivalent or superior to the pronounced meaning (dalalah al-mantuq. If it is the former, it is referred to as lahn al-khitab (parallel meaning) and if the latter, it is fahwa al-khitab (superior meaning).

Ex: to extend the Qur'anic ruling in sura al-Nisa' (4:10) which only forbids 'devouring the property of orphans' to other forms of mismanagement, is a 'parallel' meaning (lahn alkhitab). But to extend the text forbidding the utterance of 'uff' to one's parents, that is the slightest word of contempt, to physical abuse, is 'superior' to the pronounced meaning of the text.[20. Hitu, Wajiz, p.124; Salih, Mabahith, p. 301.]

The validity of these forms of harmonious meanings is approved by all schools (except the Zahiris). But this is not the case with mafhum al-mukhalafah, on which they disagreed. [21. Badran, Usul, p. 430.]

It is only when mafhum al-mukhalafah is in harmony with the pronounced meaning of the text that it is accepted as a valid form of interpretation. For an example

of the divergent meaning which is in harmony with the pronounced meaning, we may refer to the Hadeeth which provides:

'When the water reaches the level of qullatayn (approximately two feet) it does not carry dirt.' [22. Ibn Majah, Sunan I, 172, Hadeeth no.518.]

By way of mafhum almukhalafah, it is understood that water below this level is capable of 'retaining' dirt. This is an interpretation which is deemed to be in harmony with the pronounced meaning of the Hadeeth. [23. Zuhayr, Usul, II, 114.]

[Conditions of deduction by way of mafhum al-mukhalafah]

According to the Shafi'is, they are as follows:

1. The divergent meaning does not exceed the scope of the pronounced meaning. For example, the ayah which prohibits 'saying uff' to one's parents may not be given a divergent meaning to make physical abuse of them permissible.

2. It has not been left out for a reason such as fear or ignorance; for example, if a man orders his servant to 'distribute this charity among the Muslims', but by saying so he had actually intended people in need, whether Muslims or non-Muslims, and yet omitted to mention the latter for fear of being accused of disunity by his fellow Muslims.

3. It does not go against that which is dominant and customary. Ex: the Qur'an provides concerning the prohibited degrees of relationship in marriage:

'and forbidden to you are [...] your step-daughters who live with you, born of your wives with whom you have consummated the marriage; but there is no prohibition if you have not consummated the marriage' (al-Nisa', 4:23).

By way of mafhum al-mukhalafah, this ayah might be taken to mean that a step-daughter who does not live in the house of her mother's husband may be lawfully married by the latter. But this would be a meaning which relies on what would be a rare situation. The probable and customary situation in this case would be that the step-daughter lives with her mother and her stepfather, which is why the Qur'an refers to this

qualification, and not because it was meant to legalise marriage with the step-daughter who did not live with him .[24 Badran, Usul, p. 433.]

4. The original text is not formulated in response to a particular question or event. For instance, the Prophet was once asked if free-grazing livestock was liable to zakah; and he answered in the affirmative. But this answer does not imply that the stall-fed livestock is not liable to zakah.[42]

5. It does not depart from the reality, which the text is known to have envisaged. For example the Qur'an provides:

'Let not the believers befriend the unbelievers to the exclusion of their fellow believers' (Al-'Imran, 3:28).

This ayah was, in fact, revealed in reference to a particular state of affairs, namely concerning a group of believers who exclusively befriended the unbelievers, and they were forbidden from doing this.

6. It does not lead to a onclusion that would oppose another textual ruling. For example,

'Retaliation is prescribed for you in cases of murder: the free for the free, the slave for the slave, the woman for the woman [...]' (alBaqarah, 2:178).

This text may not be taken by way of mafhum al mukhalafah to mean that a man is not retaliated against for murdering a woman. For such a conclusion would violate the explicit ruling of another Qur'anic text which requires retaliation for all intentional homicides on the broadest possible basis of 'life for life' (alMa'idah, 5:45).

[For the Hanafis]

The main restriction that the Hanafis have imposed on mafhum al mukhalafah is that it must not be applied to a revealed text, namely the Qur'an and the Sunnah. As a

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[42] The Majority, aside from the Malikis, consider zakat obligatory only on free-grazing livestock.

method of interpretation, mafhum al-mukhalafah is thus validated only with regard to a non-revealed text.

The main reason that the Hanafis have given in support of this view is that the Qur'an itself discourages reliance on mafhum al-mukhalafah, for there are many injunctions in the Qur'an and Sunnah whose meaning will be distorted if they were to be given divergent interpretation. The Hanafis have further concluded that whenever necessary the Qur'an itself has stated the divergent implications of its own rulings. [29. Abu Zahrah, Usul, pp. 117-118.]

[Types of mafhum al-mukhalafah]

The Shafi'is and Malikis have, in addition to the conditions that were earlier stated, imposed further restrictions which consist of specifying exactly what forms of linguistic expressions are amenable to this method of interpretation. For this purpose the Shafi'is have sub-divided mafhum al-mukhalafah into four types. The main purpose of this classification is to introduce greater accuracy into the use of mafhum al-mukhalafah, specifying that it is an acceptable method of deduction only when it occurs in any of the following forms but not otherwise:

Mafhum al-Sifah (Implication of the Attribute).

When the ruling of a text is dependent on the fulfillment of an attribute then the ruling in question obtains only when it is present; otherwise it lapses.

Ex: Qur'anic text on the prohibited degrees of relations in marriage which includes,

'the wives of your sons proceeding from your loins' (al-Nisa' 4:23).

The pronounced meaning of this is the prohibition of the wife of one's own son in that is qualified by: 'proceeding from your loins'. By way of mafhum almukhalafah, it is

concluded that the wife of an adopted son, or a son by fosterage (rada'a), is not prohibited.[43] [30. Badran, Usul, p. 432]

Mafhum al-Shart (Implication of the Condition).

When the ruling of a text is contingent on a condition, then it obtains only in the presence of that condition, and lapses otherwise.

Ex: the Qur'anic text on the entitlement to maintenance of divorced women observing their waiting period ('iddah):

'If they are pregnant, then provide them with maintenance until they deliver the child' (al-Talaq, 65:6).

The condition here is pregnancy and the hukm applies only when this condition is present. By way of mafhum al-mukhalafah, it is concluded, that maintenance is not required if the finally divorced woman is not pregnant. [31. Hitu, Wajiz, p. 127;]

Mafhum al-Ghayah (Implication of the Extent).

When the text demarcates the extent or scope of the operation of its ruling.

Ex: the Qur'anic text on the time of fasting:

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[43] The position of the four schools and the vast majority is that the milk-father is prohibited as well, and that is taken from the following report:

عن عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا قَالَتْ: فَقُلْتُ لَهُ: يَا رَسُولَ اللَّهِ، إِنَّ أَفْلَحَ أَخَا أَبِي الْقُعَيْسِ اسْتَأْذَنَ فَأَبَيْتُ أَنْ آذَنَ لَهُ حَتَّى أَسْتَأْذِنَكَ، فَقَالَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: وَمَا مَنَعَكِ أَنْ تَأْذَنِي؟ عَمُّكِ! قُلْتُ: يَا رَسُولَ اللَّهِ، إِنَّ الرَّجُلَ لَيْسَ هُوَ أَرْضَعَنِي وَلَكِنْ أَرْضَعَتْنِي امْرَأَةُ أَبِي الْقُعَيْسِ! فَقَالَ: ائْذَنِي لَهُ، فَإِنَّهُ عَمُّكِ، تَرِبَتْ يَمِينُكِ.

Narrated al-Bukhari and Muslim from 'Aishah, I said: "O Messenger of Allah, Aflah, the brother of Abul-Qu'aysh, asked for permission to enter upon me, but I refused to let him in until I asked your permission. The Prophet (peace and blessings of Allah be upon him) said: "What kept you from letting him in? He is your paternal uncle!" I said, "O Messenger of Allah, the man is not the one who breastfed me, rather the wife of Abul-Qu'ays breastfed me." He said: "Let him in, for he is your paternal uncle, may your right hand be rubbed with dust."

'Eat and drink until you see the white streak [of dawn in the horizon] distinctly from the black' (**al-Baqarah**, **2**:**187**).

By way of mafhum al-mukhalafah, when whiteness appears in the horizon, one may neither eat nor drink. [32. Khudari, Usul, p. 123]

Mafhum al-Adad (Implication of the Stated Number).

When the ruling of a text is conveyed in terms of a specified number, that number must be observed.

Ex: the Qur'anic text on the punishment of adultery is clearly stated to be one hundred lashes (al-Nur, 24:2) By way of mafhum almukhalafah it is not permissible either to increase or decrease the stated number. [33. Khudari, Usul, p. 123.]

In conclusion, it may be said that the foregoing methods are generally designed to encourage rational enquiry in the deduction of the ahkam from the divinely revealed sources. The restrictions that are imposed on the liberty of the mujtahid are obvious enough in that the textual rulings of the Qur'an and Sunnah must be treated carefully so that they are not stretched beyond the limits of their correct implications. The rules of interpretation that are discussed under this and the preceding chapter are once again indicative of the primacy of revelation over reason, and yet they are, at the same time, an embodiment of the significant role that reason must play with the revelation.

Chapter Six: Commands and Prohibitions

The Qur'an and Sunnah differ from modern statutes in that they are not confined to commands and prohibitions and their consequences, but there is often an appeal to the conscience of the individual. This moral appeal may consist of a persuasion or a warning, an allusion to the possible benefit or harm that may accrue from observing or violating an injunction, or a promise of reward/punishment in the hereafter. Modern laws are often devoid of such appeals. [1. Cf Shaltut, Islam, p 499.]

While an injunction is normally expected to be in the imperative mood, there are occasions where a simple past is used as a substitute. For example, the injunctions that `retaliation is prescribed for you in cases of murder' and that `fasting is prescribed for you' (al-Baqarah, 2:178 and 183) are both expressed in the past tense. Similarly, a Qur'anic injunction may occur in the form of a moral condemnation of a certain form of conduct, such as the rule on the sanctity of private dwellings which provides:

'It is no virtue to enter houses from the back' (al-Baqarah, 2: 189)

Also, a Qur'anic command/prohibition may be conveyed in the form of an allusion to the consequences of a form of conduct.

I. Commands

A command proper (amr) is defined as a verbal demand to do something issued from a position of superiority over who is inferior. [3. Badran, Usul, p. 360.]

Command in this sense differs from:

- supplication (du`a'), a demand from an inferior to one who is superior,
- request (iltimas), a demand among people of equal or near-equal status.

[What does a command infer]

Since a verbal command can mean different things, namely an obligatory order, a mere recommendation, or even permissibility, the ulama differed as to which of these is the primary meaning. Some held that amr is a homonym (mushtarak) which imparts all

of these meanings. Others held that amr partakes in only two of these concepts, namely obligation and recommendation. Still others held that amr implies a permission to do something and that this is the widest meaning of amr, which is common to all three of the foregoing concepts. [4. Shawkani, Irshad, p. 91.]

According to the majority opinion, however, a command by itself, that is, when it is not attended by clues or circumstances that might give it a particular meaning, implies obligation or an emphatic demand only.

[Other implications of a command]

Thus when we read in the Qur'an commands such as

"**kulu wa'shrabu (`eat and drink')" (al-A'raf, 7:31)**

the indications are that they amount to **no more than permissibility (Ibahah)**. For eating and drinking are the necessities of human life, and a command in respect of them must logically amount to a permissibility only.

Similarly the Qur'anic permission in respect of hunting after the completion of the hajj in sura al-Ma'idah (**5:2 -wa idha halaltum fastadu**) and its address to the believers to **'scatter in the land' (fa'ntashiru fi'l-ard)** after performing the Friday prayers (al-Jumu`ah, 62:10) are both in the imperative form. But in both cases the purpose is to render these activities permissible only. [5. Cf. Shatibi, Muwafaqat, III, 88.]

A command may likewise convey a recommendation should there be indications to warrant this. This is, for example, the case with regard to the command which requires the documentation of loans:

`When you give or take a loan for a fixed period, reduce it into writing' (al-Baqarah, 2:282).

However, the ayah reads:

`and if one of you deposit a thing on trust, let the trustee [faithfully] discharge his trust'.

Here the use of the word 'trust' (amanah) signifies that the creditor may trust the debtor even without any writing. [6. Khallaf, Ilm, p.111.]

A command may, according to the indications provided by the context and circumstances, **imply a threat**, such as the Qur'anic address to the unbelievers:

'Do what you wish' (i`malu ma shi'tum-al-Nur, 24: 33)

A command may similarly imply contempt (ihanah) such as the Qur'anic address to the unbelievers on the Day of Judgment:

'Taste [the torture], you mighty and honourable!'

A command may sometimes imply supplication when someone says, for example, `O Lord grant me forgiveness', **and indeed a host of other meanings**. [8. Badran, Usul, p.363]

[The command after a prohibition (al-amr ba'd al-hazar)]

The majority of ulama have held the view that a command following a prohibition means permissibility, not obligation.

Ex: the permission to hunt following its prohibition during the hajj and the permission to conduct trade following its prohibition at the time of the Friday prayers (al-Ma'idah, 5:2; and al-Jumu'ah, 62:10 respectively)[9. Badran, Usul, p.363]

[Does a command require a single compliance or repetition?]

According to the majority view, in the absence of such indications, that repeated performance is required, a single instance of performance is the minimum requirement.

Among the indications which determine repetition is when:

1- a command is issued in **conditional** terms. For example, the Qur'anic provision:

`if you are impure then clean yourselves' (al-Ma'idah, 5:7)

2- Similarly when a command is dependent on a **cause or an attribute**, then it must be fulfilled whenever the cause or the attribute is present. For example:

`Perform the salah at the decline of the sun' (**Bani Isra'il**, **17**:**18**) requires repeated performance at every instance when the cause for it is present, that is, when the specified time of salah arrives.[11. Shawkani, Irshad, pp 98-99]

[Does a command require immediate or delayed performance?]

This must be determined in the light of indications. When, for example, A tells B to 'do such and such now', or alternatively orders him to `do such and such tomorrow', both orders are valid and there is no contradiction. However, if a command were to require immediate execution then the word `now' In the first order would be superfluous just as the word `tomorrow' in the second order would be contradictory. When a person commands another to `bring me some water' while he is thirsty, then by virtue of this indication, the command requires immediate performance just as the order to 'collect the rent' when it is given, say, in the middle of the month while the rent is collected at the end of each month, must mean delayed performance.

It is thus obvious that the commandant may specify a particular time in which the command must be executed. The time limit may be strict or it may be flexible. If it is flexible, like the command to perform the obligatory salah, then performance may be delayed until the last segment of the prescribed time. But if the command itself specifies no time limit, such as the order to perform an expiation (kaffarah), then execution may be delayed indefinitely within the expected limits of one's lifetime.

However, given the uncertainty of the time of one's death, an early performance is recommended.[12. Shawkani, Irshad, pp.99-100]

[Does a command to do something imply the prohibition of its opposite?]

According to the majority, a command to do something does imply the prohibition of its opposite regardless as to whether the opposite in question consists of a single act or of a plurality of acts. Thus when a person is ordered to move, he is in the meantime forbidden to remain still; or when a person is ordered to stand, he is forbidden from doing any of a number of opposing acts such as sitting, crouching, lying

down, etc. However, some ulema, including al-Juwayni, al-Ghazali, Ibn al-Hajib and the Mu'tazilah, have held that a command does not imply the prohibition of its opposite. A group of the Hanafi and Shafi'i ulama have held that only one of the several opposing acts, whether known or unknown, is prohibited, but not all. [13. Shawkani, Irshad, pp.101-102.]

II. Prohibitions

Prohibition (nahy), being the opposite of a command, is defined as a word or words which demand the avoidance of doing something addressed from a position of superiority to one who is inferior.[14. Badran, Usul, p.366.]

The typical form of a **prohibitory order** in Arabic is that of a negative command beginning with la such as la taf'al (do not), or the Qur'anic prohibition which reads

'slay not [la taqtulu] the life which God has made sacred' (**al-An'am**, **6**:**151**).

A prohibition may be expounded in a **statement** (**jumlah khabariyyah**) such as occurs, for example, in the Qur'an (al-Baqarah, 2:221):

`prohibited to you are the flesh of dead corpses and blood'.

It may sometimes occur in the form of a **command which requires the avoidance** of something, such as the Qur'anic phrase wa dharu al-bay' (`abandon sale', that is during the time of Friday salah-al-Jumu`ah, 62:100), or may occur in a variety of other forms that are found in the Qur'an.

Although the primary meaning of nahy is illegality, or tahrim, nahy is also used to imply a mere **reprehension** (**karahiyyah**), or **guidance** (**irshad**), or **reprimand** (**ta'dib**), or **supplication** (**du'a'**).

An example of nahy which implies **reprehension** is:

`prohibit not [la tuharrimu] the clean foods that God has made lawful to you' (**al-Ma'idah**, **5**:**87**).

Nahy which conveys moral **guidance** may be illustrated by :

'ask not questions about things which, if made plain to you, may cause you trouble' (al-Ma'idah, 5:104).

An example of nahy which implies a **threat** is when a master tells his recalcitrant servant: `Don't follow what I say and you will see.'

An example of nahy which conveys **supplication**:

in sura al-Baqarah (2:286): 'Our Lord, condemn us not if we forget.'

The ulama differed as to which of these is the primary (haqiqi). Some held that illegality (tahrim) is the primary meaning of nahy while others consider reprehension (karahiyyah) to be the original meaning of nahy. According to yet another view, nahy is a homonym in respect of both. **The majority (jumhur) of ulama have held the view that nahy primarily implies tahrim**, unless there are indications to suggest otherwise.

The primary meaning of nahy may be abandoned for a figurative meaning if there is an indication. Hence the phrase la tu'akhidhna (`condemn us not') implies supplication, as the demand here is addressed to Almighty God. [15. Shawkani, Irshad, pp.109.]

III. Value of Legal Injunctions

The object of a prohibition may be to prevent an act such as adultery (zina), or it may be to prevent the utterance of words. In either case, the prohibition does not produce any rights or legal effects whatsoever. Hence no right of paternity is established through zina. Similarly, no right of ownership is proven as a result of the sale of a corpse.

If the object of prohibition is an act, and it is prohibited owing to an extraneous attribute rather than the essence of the act itself, such as fasting on the day of `id, then the act is null and void (batil) according to the Shafi`is but is irregular (fasid) according to the Hanafis. The act, in other words, can produce no legal result according to the

Shafi`is, but does create legal consequences according to the Hanafis, although it is basically sinful. The Hanafis consider such acts to be defective and must be dissolved by means of annulment (faskh), or must be rectified if possible. The position is, however, different with regard to devotional matters (`ibadat). The fasid in this area is equivalent to batil.

But if the prohibition is due to an external factor such as a sale concluded at the time of the Friday prayer, or when salah is performed in usurped land (al-ard al-maghsubah), the ulama are generally in agreement that all the legal consequences will follow from the act, although the perpetrator would have incurred a sin. Thus the sale so concluded will prove the right of ownership and the salah is valid and no compensatory performance will be required.[44] [16. Shawkani, Irshad, p.110; Badran, Usul, p. 369.]

[Does a prohibition require both immediate as well as repeated compliance?]

The ulama are generally in agreement that it does and that this is the only way a prohibition can be observed. Unless the object of a prohibition is avoided at all times, the prohibition is basically not observed. However if a prohibition is qualified, then it has to be observed within the meaning of that condition. An example of this:

'When there come to you believing women refugees, examine [and test] them. God knows best as to their faith. If you find that they are believers, then send them not back to the unbelievers.'

In this ayah, the prohibition (not to send them back) is conditional upon finding that they are believers, and until then the prohibition must remain in abeyance.[17. Badran, Usul, p.370.]

[44] The Hanbalis would consider this salah void. This is one of the most famous controversies. It will apply, also, to covering one's nakedness in salah with a usurped garment or a silk one, for men, or making wudu with usurped water…etc.

The purpose of the command is to create something or to establish the existence of something, and this is realized by a single instance of execution. A prohibition on the other hand aims at the absence of something, and this cannot be realized unless it is absent all the time. [18. Hitu, Wajiz, p.151.]

Whenever a prohibition succeeds a command, it conveys illegality or tahrim, not a mere permissibility.[19. Hitu, Wajiz, p.151.]

Injunctions, whether occurring in the Qur'an or the Sunnah, are of two types:

1- explicit (sarih) and

2- implicit (ghayr sarih).

Explicit commands and prohibitions require total obedience without any allowance **regardless as to whether they are found to be rational** or not. For it is in the essence of devotion (ibadah) that obedience does not depend on the rationality or otherwise of an injunction.

Should one should adopt a literal approach to the enforcement of commands and prohibitions, or allow considerations of rationality and maslahah to play a part in their implementation? For example, the Hadeeth which provides that the owners of livestock must give `one in forty sheep' in zakah [20. Abu Dawud, Sunan, II, 410, Hadeeth no.1567] should this provision be followed literally, or could we say that the equivalent price could also be given in zakah?

Should the means that lead to the performance of a command, or the avoidance of a prohibition be covered by the rules which regulate their ends? Briefly, the answer is in the affirmative. The means which lead to the observance of commands and prohibitions are covered by the same ruling. [23. Shatibi, Muwafaqat, 93.]

To determine whether a prohibition conveys actual tahrim, or mere reprehension (karahah) is not always easily understood from the words of the nusus. In Shatibi's estimation, a much larger portion of the nusus of the Qur'an cannot be determined by reference only to the linguistic forms in which they are expressed. The mujtahid must

therefore be fully informed of the general principles and objectives of the Shari'ah so as to be able to determine the precise values of the nusus.[25. Shatibi, Muwafaqat, III, 90.]

Chapter Seven: Naskh (Abrogation)

Literally, naskh means 'obliteration', such as in nasakhat al-rih athar al-mashy, meaning 'the wind obliterated the footprint'. Naskh also means transcription or transfer (al-naql wa al-tahwil) of something from one state to another while its essence remains unchanged. In this sense, 'naskh' has been used in the Qur'anic ayah which reads: inna kunna nastansikhu ma kuntum ta'malun, that is,

'verily We write all that you do' (al-Jathiyah, 45:29).

The ulama differed as to which of these two meanings of naskh is the literal (haqiqi). Some, including Abu Bakr al-Baqillani and al-Ghazali, held that 'naskh' is a homonym and applies equally to either of its two meanings. According to the majority, obliteration (al-raf' wa al-izalah) is the primary meaning. [1. Ghazali, Mustasfa, I, 69]

[Juridical Definition]

Naskh may be defined as the suspension or replacement of one Shari'ah ruling by another, provided that the latter is of a subsequent origin, and that the two rulings are enacted separately from one another. According to this definition, naskh operates with regard to the rules of Shari'ah only, which precludes the rules that are founded in rationality (aql) alone.

The requirement that the two rulings must be separate means that each must be enacted in a separate text. For when they both occur in one and the same passage, it is likely that one complements or qualifies the other. [2. Badran, Usul, p. 442.]

Abrogation applies almost exclusively to the Qur'an and the Sunnah. And even then, the application of naskh to the Qur'an and Sunnah is confined to the lifetime of the Prophet. During his lifetime, there were instances when some of the rulings of the Qur'an and Sunnah were either totally or partially repealed.

The ulama are unanimous on the occurrence of naskh in the Sunnah. With regard to the Qur'an, there is some disagreement both in principle as well as on the number of instances in which naskh occurred.[3. Khallaf, Ilm, p. 222]

Abrogation is by and large a Madinese phenomenon. Certain rules were introduced, at the early stage of the advent of Islam, which were designed to win over the hearts of the people. An example of this is the number of daily prayers which was initially fixed at two but was later increased to five. Similarly, mut`ah, or temporary marriage, was initially permitted but was subsequently prohibited when the Prophet migrated to Madinah.[45] [4. Shatibi, Muwafaqat]

Some Hanafi and Mu'tazili scholars held the view that ijma can abrogate a ruling of the Qur'an or the Sunnah. The proponents of this view have claimed that it was due to ijma` that `Umar b. al-Khattab discontinued the share of the mu'allafah al-qulub.[5. Taj, Siyasah, p.14.]

The correct view, however, is that owing to differences of opinion that are recorded on this matter, **no ijma` could be claimed to have materialized**.[6. Badran, Usul, p.458.] Besides, the **majority held that ijma` neither abrogates nor can be abrogated**. For a valid ijma' may never be concluded in contradiction to the Qur'an or the Sunnah in the first place.

The share of the mu'allafah al-qulub was discontinued by Umar b. al-Khattab on the grounds of the **Shari'ah-oriented policy** (**al-siyasah alshar`iyyah**). [7. Amidi, Ihkam, III, 161]

According to the general rule a Qur'anic nass or a Mutawatir Hadeeth cannot be abrogated by a weaker Hadeeth, by ijma' or by qiyas. For they are not of equal authority

[45] Mut'ah was forbidden in the late Madinese period.

to the nass. Ijma`, qiyas and ijtihad, being weaker in comparison to the nusus, cannot abrogate the rules of divine revelations.[8. Khallaf, Ilm, p. 228.]

The preferable view is that ijma' cannot abrogate the rulings of the Qur'an, the Sunnah, or of another ijma' which is founded in the Qur'an, Sunnah, or qiyas. However, a **subsequent ijma' may abrogate an existing ijma` founded in considerations of public interest**, or maslahah mursalah.[46] [9. Badran, Usul, p. 459.]

In his Risalah, **Imam Shafi'i has maintained the view that naskh is not a form of annulment (ilgha'); it is rather a suspension or termination** of one ruling by another. Naskh in this sense is a form of explanation (bayan) which does not entail a total rejection of the original ruling.[11. Shafi'i, Risalah, p. 103]

However, the majority of ulama do not accept the view that naskh is a form of bayan. That is because when a ruling is terminated, it cannot be explained.

There may be instances of conflict between two texts which, after scrutiny, may turn out to be apparent rather than real, and it may be possible to reconcile them.

If the two texts cannot be so reconciled, then the one which is stronger in respect of authenticity (thubut) is to be preferred. If, for example, there be a conflict between the Qur'an and a solitary Hadeeth, the latter is weaker and must therefore give way to the Qur'an. The solitary, or Ahad, Hadeeth may also be abrogated by the Mutawatir, the Mashhur, or another Ahad, which is dearer in meaning or which is supported by a stronger chain of narration (isnad).

But if the two texts happen to be equal on all of these points, then the prohibitory text is to be given priority over the permissive.

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[46] In this case the issue subject to the ruling of ijmaa' is not the same. Thus, the different rulings. The validity of ijmaa' is based in the hadeeth that negated the possibility of the entire ummah agreeing on falsehood. If that is not possible, then one of the two ijmaa's is void, or they address different issues.

If the time factor can be determined, then the later abrogates the earlier.

[Establishment of the chronological sequence]

This can only be done by means of reliable reports, not rational argumentation.[12. Ghazali, Mustasfa, I, 83]

There are also certain subjects to which abrogation does not apply. Included among these are provisions pertaining to the attributes of God, belief in the principles of the faith, and the doctrine of tawhid and the hereafter, which could not be subjected to abrogation. Another subject is the Shari'ah of Islam itself, which is the last of the revealed laws and can never be abrogated in its entirety.[13. Ghazali, Mustasfa, I,72.] The ulama are also in agreement that rational matters and moral truths such as the virtue of doing justice or being good to one's parents, and vices such as the enormity of telling lies, are not changeable and are therefore not open to abrogation. Similarly the nusus of the Qur'an and Sunnah which relate the occurrence of certain events in the past are not open to abrogation. [14. Badran, Usul, p.454]

To summarise: no abrogation can take place unless:

First, that the text itself has not precluded the possibility of abrogation. An example of this is the Qur'anic provision concerning persons who are convicted of slanderous accusation (qadhf) that they may never be admitted as witnesses (al-Nur, 24:4).

Second, that the subject is open to the possibility of repeal. Thus the attributes of God and the principles of belief, moral virtues and rational truths, etc., are not open to abrogation.

Third, that the abrogating text is of a later origin than the abrogated.

Fourth, that the two texts are of equal strength in regard to authenticity (thubut) and meaning (dalalah). Thus a textual ruling of the Qur'an may be abrogated either by another Qur'anic text of similar strength or by a Mutawatir Hadeeth, and, according to the Hanafis, even by a Mashhur Hadeeth, as the latter is almost as strong as the

Mutawatir. However, according to the preferred (rajih) view, neither the Qur'an nor the Mutawatir Hadeeth may be abrogated by a solitary Hadeeth.

According to Imam Shafi'i, however, the Sunnah, whether as Mutawatir or Ahad, may not abrogate the Qur'an. [16. Shafi'i, Risalah, p.54]

Fifth, that the two texts are genuinely in conflict and can in no way be reconciled with one another.

And lastly, that the two texts are separate and are not related to one another in the sense of one being the condition (shart), qualification (wasf) or exception (istithna') to the other. [17. Hitu, Wajiz, p.244]

Types of Naskh

Abrogation may either be:

1. explicit (sarih), or
2. implicit (dimni).

In the case of explicit abrogation, the abrogating text clearly repeals one ruling and substitutes another in its place. The facts of abrogation, including the chronological order of the two rulings, the fact that they are genuinely in conflict, and the nature of each of the two rulings, and so forth, can be ascertained in the relevant texts.

Ex: the Hadeeth which provides:

`I had forbidden you from visiting the graves. Nay, visit them, for they remind you of the hereafter.'[18. Muslim, Sahih, p.340.]

An example of explicit abrogation in the Qur'an is the passage in sura al-Baqarah (2: 142-144) with regard to the change in the direction of the qiblah from Jerusalem to the Ka'bah.

In the case of implicit abrogation, the abrogating text does not clarify all the relevant facts. Instead we have a situation where the Lawgiver introduces a ruling which is in conflict with a previous ruling and the two cannot be reconciled.

Ex: the ruling in sura al-Baqarah (2:180) which permitted bequests to one's parents and relatives. This was subsequently abrogated by another text (al-Nisa, 4:11) which entitled the legal heirs to specific shares in inheritance. Despite the fact that the two rulings are not diametrically opposed, the majority of ulama have held that the initial ruling which validated bequests to relatives has been abrogated by the rules of inheritance. They have held that the ayah of inheritance prescribes specific portions for legal heirs which can be properly implemented only if they were observed in their entirety. This analysis is substantiated by the explicit ruling of a Hadeeth in which the Prophet is reported to have said, `God has assigned a portion to all who are entitled. Hence there shall be no bequest to legal heirs.' [22. Abu Dawud, Sunan, II, 808, Hadeeth no. 2864]

Ash-Shafi'i (Risalah, p. 69) observed that the abrogation of bequest to relatives by the ayah of inheritance is a probability, but he adds that the ulama held that it abrogated the ayah of bequests. Then, he quotes the Hadeeth `there shall be no bequest to an heir.' It thus appears that in his view, the abrogation in the Qur'an is a probability which has been confirmed by aHadeeth.

Implicit abrogation has been sub-divided into:

1. total abrogation (naskh kulli) and
2. partial abrogation (naskh juzi).

In the case of the former, the whole of a particular nass is abrogated by another.

[Total Abrogation]

This may be illustrated by a reference to the two Qur'anic texts concerning the waiting period (`iddah) of widows:

1. Those of you who are about to die and leave widows should bequeath for their widows a year's maintenance and residence; but if they leave the residence, you are not responsible for what they do of themselves (al-Baqarah, 2:240).

2.Those of you who die and leave widows, the latter must observe a waiting period of four months and ten days; when they have fulfilled their term, you are not responsible for what they do of themselves (al-Baqarah, 2:234)

But this is a case, as already noted, of an implicit naskh, in that the two ayat do not expound, with complete clarity, all the facts of abrogation and it is not certain whether they are genuinely in conflict, for the term `a year's maintenance and residence' in the first ayah does not recur in the second. This would, for example, introduce an element of doubt concerning whether the two ayat are concerned with different subjects. This is not to argue against the majority view which seems to be the settled law, but merely to explain why an abrogation of this type has been classified as implicit.

Partial abrogation (naskh juz'i)

This is a form of naskh in which one text is only partially abrogated by another, while the remaining part continues to be operative.

Ex: the Qur'anic ayah of qadhf (slanderous accusation) which has been partially repealed by the ayah of imprecation (li'an). The two texts are as follows:

1.Those who accuse chaste women [of adultery] and then fail to bring four witnesses to prove it shall be flogged with eighty lashes (al-Nur, 24:4).

2.Those who accuse their spouses and have no witnesses, other than their own words, to support their claim, must take four solemn oaths in the name of God and testify that they are telling the truth (al-Nur, 24:6).

The first ayah lays down the general rule regarding anyone, be it a spouse or otherwise. The second provides that if the accuser happens to be a spouse who cannot provide four witnesses, he may take four solemn oaths.

The ruling of the first text has thus been repealed by the second insofar as it concerns a married couple.[23. Shafi'i, Risalah, p. 72]

[Abrogation of the Words and Rulings]

On the basis of the distinction between the words and the rulings of the Qur'an, naskh has been classified into three types:

1- The most typical variety is referred to as naskh al-hukm, or naskh in which the ruling alone is abrogated. Thus the words of the Qur'anic text concerning bequests to relatives (al-Baqarah, 2:180) and the `iddah of widows (al-Baqarah, 2:240) are still a part of the Qur'an.

2- Naskh al-tilawah (as naskh al-qira'ah), that is, abrogation of the words of the text while the ruling is retained.

3- Naskh al-hukm wa al-tilawah, that is, abrogation of both the words and the ruling –

The last two are rather rare and the examples which we have are not supported by conclusive evidence. Having said this, however, except for a minority of Mu'tazili scholars, the ulama are generally in agreement on the occurrence of abrogation in both forms. [24. Amidi, Ihkam, III,141.]

An example of naskh al-tilawah is the passage which, according to a report attributed to `Umar b. al-Khattab, was a part of the Qur'an, `When a married man or a married woman commits zina, their punishment shall be stoning as a retribution ordained by God.' The Arabic version reads 'al-Shaykhu wa'l-shaykhatu idha zanaya farjumuhuma albattatas nakalan min Allah.'

Example on the abrogation of the words and law: According to a report which is attributed to the Prophet's widow, `A'ishah, it had been revealed in the Qur'an that ten clear suckings by a child, make marriage unlawful between that child and others who drank the same woman's milk. Then it was abrogated and substituted by five suckings and it was then that the Messenger of God died. [26. Amidi, Ihkam, IV, 154.]

[Classification according to the Abrogator]

According to the majority (jumhur) view, the Qur'an and the Sunnah may be abrogated by themselves or by one another. In this sense, abrogation may be once again classified into the following varieties:

(1) Abrogation of the Qur'an by the Qur'an, which has already been illustrated.

(2) Abrogation of the Sunnah by the Sunnah. This too has been illustrated by the two aHadeeth which we quoted under the rubric of explicit abrogation.

(3) Abrogation of the Qur'an by Sunnah. An example of this is the ayah of bequest in sura al-Baqarah (2:180) which has been abrogated by the Hadeeth which provides that `there shall be no bequest to an heir'. It is generally agreed that `the Qur'an itself does not abrogate the ayah of bequest and there remains little doubt that it has been abrogated by the Sunnah'. [27. Hitu, Wajiz, p. 252.]

(4) Abrogation of the Sunnah by the Qur'an. An example of this is the initial ruling of the Prophet which determined the qiblah in the direction of Jerusalem. This was later repealed by the Qur'an (al-Baqarah, 2:144) [28. Hitu, Wajiz, p. 252.]

Imam Shafi'i, the majority of the Mu'tazilah, and Ahmad (according to one of two variant reports), overruled the validity of the last two types. In their view, abrogation of the Qur'an by the Sunnah and vice versa is not valid.[29. Amidi, Ihkam, III,153]

This is the conclusion that alShafi'i has drawn from his interpretation of a number of Qur'anic ayat where it is indicated that the Qur'an can only be abrogated by the Qur'an itself. [30. Shafi'i, Risalah, p.54ff; Amidi, Ihkam, III,156ff.] Thus we read in sura al-Nahl (16:101): And when We substitute one ayah in place of another ayah [ayatun makana ayatin], and God knows best what He reveals. This text, according to al-Shafi`i, is self-evident on the point that an ayah of the Qur'an can only be abrogated or replaced by another ayah.

The fact that the ayah occurs twice in this text provides conclusive evidence that the Qur'an may not be abrogated by the Sunnah. In another place, the Qur'an reads: None of our revelations do We abrogate [ma nansakh min ayatin] or cause to be

forgotten unless We substitute for them something better or similar (at-Baqarah,2:106). The text in this ayah is once again clear on the point that in the matter of naskh, the Qur'an refers only to itself. Indeed the Qur'an asks the Prophet to declare that he himself cannot change any part of the Qur'an. This is the purport of the text in sura Yunus (10:1 5) which provides: `Say: it is not for me to change it of my own accord. I only follow what is revealed to me.' 'The Sunnah in principle', writes alShafi`i, 'follows, substantiates, and clarifies the Qur'an; it does not seek to abrogate the Book of God'.[31. Shafi'i, Risalah, p. 54.] All this al-Shafi'i adds, is reinforced in yet another passage in the Qur'an where it is provided: 'God blots out or confirms what He pleases. With Him is the Mother of the Book' (al-Ra'd, 13: 39).

AI-Shafi'i is equally categorical on the other limb of this theory, namely that the Qur'an does not abrogate the Sunnah either. Only the Sunnah can abrogate the Sunnah: Mutawatir by Mutawatir and Ahad by Ahad. Mutawatir may abrogate the Ahad, but there is some disagreement on whether the Ahad can abrogate the Mutawatir. According to the preferred view, which is also held by al-Shafi'i, the Ahad, however, can abrogate the Mutawatir. To illustrate this, al-Shafi'i refers to the incident when the congregation of worshippers at the mosque of Quba' were informed by a single person (khabar alwahid) of the change of the direction of the qiblah; they acted upon it and turned their faces toward the Ka'bah.

The fact that Jerusalem was the qiblah had been established by continuous, or mutawatir, Sunnah, but the Companions accepted the solitary report as the abrogater. [32. Shafi'i, Risalah, p.177.]

If any Sunnah is meant to be abrogated, the Prophet himself would do it by virtue of another Sunnah, hence there is no case for the abrogation of Sunnah by the Qur'an.[33. Shafi'i, Risalah, p. 102.]

If the Qur'an were to abrogate the Sunnah, while the Prophet has not indicated such to be the case, then, to give an example, all the varieties of sale which the Prophet

had banned prior to the revelation of the Qur'anic ayah on the legality of sale (al-Baqarah, 2:275) would be rendered lawful with the revelation of this ayah. Similarly, the punishment of stoning for zina which is authorised by the Prophet would be deemed abrogated by the variant ruling of one hundred lashes in sura al-Nur (24:2). If we were to open this process, it would be likely to give rise to unwarranted claims of conflict and a fear of departure from the Sunnah [34. Shafi'i, Risalah, pp. 57-58.

Notwithstanding the strong case that al-Shafi'i has made in support of his doctrine, **the majority opinion, which admits abrogation of the Qur'an and Sunnah by one another is preferable, as it is based on the factual evidence of having actually taken place**. AI-Ghazali is representative of the majority opinion on this when he writes that **identity of source (tajanus) is not necessary in naskh**. The Qur'an and Sunnah may abrogate one another as they issue both from the same provenance. While referring to al-Shafi'i's doctrine, al-Ghazali comments: `how can we sustain this in the face of the evidence that the Qur'an never validated Jerusalem as the qiblah; it was validated by the Sunnah, but its abrogating text occurs in the Qur'an?'.[35. Ghazali, Mustasfa, I, 81]

Naskh and takhsis resemble one another in that both tend to qualify or specify an original ruling in some way. This is particularly true, perhaps, of partial naskh. We have already noted al-Shafi'i's perception of naskh which draws close to the idea of the coexistence of two rulings and an explanation of one by the other.

In this section, we shall outline the basic differences between naskh and takhsis without attempting to expound the differences between the various schools on the subject.

Naskh and takhsis differ from one another in that:

1- There is no real conflict in takhsis. The two texts, in effect complement one another.

2- Naskh can occur in respect of either a general or a specific ruling whereas takhsis can, by definition, occur in respect of a general ruling only.[36. Ghazali, Mustasfa, I,71]

3- Naskh is confined to the Qur'an and Sunnah. Takhsis on the other hand could also occur by means of rationality and circumstantial evidence.

4- It would follow from this that takhsis (i.e. the specification or qualification of a general text) is possible by means of speculative evidence such as qiyas and solitary Hadeeth. [37. Amidi, Ihkam, III, 113]

5- In naskh it is essential that the abrogator (al-nasikh) be later in time. With regard to takhsis, the Hanafis maintain that the 'Amm and the Khass must in fact be either simultaneous or parallel in time. But according to the majority, they can precede or succeed one another.

6- Lastly, naskh does not apply to factual reports of events (akhbar).

Does a subsequent addition (taz'id) to an existing text, which may be at variance with it, amount to abrogation?

When new materials are added to an existing law, the added materials may fall into one of the following two categories:

(1) The addition may be independent of the original text but relate to the same subject, such as adding a sixth salah to the existing five. Does this amount to the abrogation of the original ruling? The majority of ulama have answered this question in the negative.

(2) The new addition may be dealing with something that constitutes an integral part of the original ruling.

A hypothetical example of this would be to add another unit (rak'ah), or an additional prostration (sajdah) to one or more of the existing obligatory prayers. Does this kind of addition amount to the abrogation? The ulama differed on this, but the majority have held the view that it does not amount to abrogation. The Hanafis have held,

however, that such an addition does amount to abrogation. It is on this ground that they considered the ruling of the Ahad Hadeeth on the admissibility of one witness plus a solemn oath by the claimant to be abrogating the Qur'anic text which enacts two witnesses as standard legal proof. The abrogation, however, does not occur because the Ahad cannot repeal the Mutawatir of the Qur'an.[38. Amidi, Ihkam, III,170; Hitu, Wajiz, p.256.]

The Argument Against Naskh

As already stated, the ulama are not unanimous over the occurrence of naskh in the Qur'an.[47] While al-Suyuti claimed, in his Itqan fi `Ulum al-Qur'an, twenty-one instances of naskh in the Qur'an, Shah Wali Allah (d. 1762) only retained five of them as genuine. Another scholar, Abu Muslim al-1sfahani (d. 934) has, on the other hand, denied the incidence of abrogation in the Qur'an altogether. [41. Abu Zahrah, Usul, p.155.]

The majority of ulama have nevertheless acknowledged the incidence of naskh in the Qur'an on the authority of the Qur'an itself. However, it will be noted that the counter-argument is also based on the same Qur'anic passages which have been quoted in support of naskh. The following two ayat need to be quoted again:

None of our revelations do We abrogate nor cause to be forgotten unless We substitute for them something better or similar [ma nansakh min ayatin aw nunsiha na'ti bikhayrin minha aw mithliha] (al-Baqarah, 2:106).

Elsewhere we read in sura al-Nahl (16:106):

[47] The disagreement of al-Isfahani alone doesn’t comprmise the agreement of the scholars before and after him.

When We substitute one revelation for another, **and God knows best what He reveals [wa idha baddalna ayatan makana ayatin wa' Llahu a'lam bima yunazzil]**.

To some, **the word 'ayah'** in these passages refers to **previous scriptures**.

Abu Muslim al-Isfahani, a Mu'tazili scholar and author of a Qur'an commentary (Jami al-Ta'wil), held the view that **all instances of so-called abrogation in the Qur'an are in effect qualifications and takhsis**. [42. Subhi al-Salih, Mabahith, p.274.]

To al-Isfahani, the word **'ayah'** in these passages means **'miracle'**. In the first of the two passages quoted this would imply that God empowered each of His Messengers with miracles that none other possessed. This interpretation finds further support in yet another portion of the same passage (i.e. 2:108) which provides in an address to the Muslim community: `Would you want to question your Prophet as Moses was questioned before?' It is then explained that Moses was questioned by the Bani Isra'il regarding his miracles, not the abrogation as such? [43. Amidi, Ihkam, III, 120.] The word `ayah', in the second passage (i.e. al-Nahl, 16:101) too means 'miracle'.

AI-Isfahani further argues: **Naskh is equivalent to ibtal**, that is, 'falsification' or rendering something invalid, and ibtal has no place in the Qur'an. This is what we learn from the Qur'an itself which reads in sura Ha-Mim (41:42): 'No falsehood can approach it [the Book] from any direction [la ya'tihi al-batil min bayn yadayhi wa la min khalfih].' In response to this, however, it is said that naskh a not identical with ibtal; that naskh for all intents and purposes means suspension of a textual ruling, while the words of the text are often retained and not nullified. [44. Amidi, Ihkam, III, 124.]

Al-Isfahani added to his interpretation that **supposing** that the **passages** under consideration do **mean abrogation**, **they do not confirm the actual occurrence** of naskh.

Lastly, al-Isfahani maintains that all instances of conflict in the Qur'an are **apparent rather than real**, and can be reconciled. This, he adds, is only logical of the Shari'ah, which is meant to be for all times.[45. Abu Zahrah, Usul, p.155.]

Having explained al-Isfahani's refutation of the theory of naskh, **it remains to be said that according to the majority of ulema**, **the occurrence of naskh in the Qur'an is proven**, although not in so many instances as has often been claimed.

The proponents of naskh stated that the incidence of naskh in the Qur'an is proven, not only by the Qur'an, but also by a conclusive ijma. Anyone who opposes it is thus going against the dictates of ijma.[46. Al-Ghazali, Mustasfa, I, 72.]

In the face of the foregoing disagreements, it is admittedly difficult to see the existence of a conclusive ijma. But according to the rules of ijma`, once an ijma' is properly concluded, any subsequent differences of opinion would not invalidate it. Divergent views such as that of al-Isfahani seem to have been treated in this light, and almost totally ignored. In his book The Islamic Theory of International Relations: New Directions For Islamic Methodology and Thought (originally a doctoral dissertation), Abdul Hamid Abu Sulayman is critical of the classical approach to naskh and calls for a fresh and comprehensive understanding `of the technique of naskh [.. .] on a systematic and conceptual basis, not a legalistic one' [47. Abu Sulayman, The Islamic Theory, p.84.] The author is of the view that the classical exposition of naskh is unnecessarily restrictive as it tends to narrow down the 'rich Islamic and Qur'anic experience', and also indulges, in some instances at least, in a measure of exaggeration and excess. [48. Abu Sulayman, The Islamic Theory, p. 107.] The author maintains that abrogation was primarily an historical, rather than juridical, phenomenon and ought to have been read in that context. The argument runs that the facts of naskh in regard to, for example, the ayah of the sword, as discussed below, were largely dictated by the prevailing relationship between Muslims and non-Muslims at the time. Now, instead of

understanding naskh as a circumstance of history, the ulama turned it into a juridical doctrine of permanent validity.[48] [49. Abu Sulayman, The Islamic Theory, p. 73.]

Naskh was, however, taken so far as to invalidate a major portion of the Qur'an. This is precisely the case with regard to the ayah of the sword (ayah al-sayf) which reads: `And fight the polytheists all together as they fight you all together, and know that God is with those who keep their duty [to Him]' (al-Tawbah, 9:36). Influenced by the prevailing pattern of hostile relations with non-Muslims, 'some jurists took an extreme position in interpreting this ayah,' and claimed it abrogated all preceding ayat pertaining to patience, tolerance and the right of others to self-determination. [50. Abu Sulayman, The Islamic Theory, p. 36.] Although scholars are not in agreement as to the exact number of ayat that were abrogated as a result, Mustafa Abu Zayd has found that the ayah of the sword abrogated no less than 140 ayat in the holy Book. [51. Abu Zayd, Al-Nasikh wa al-Mansukh, I, 289 ff and II, 503 ff.] Jurists who were inclined to stress the aggressive aspect of jihad could only do so by applying abrogation to a large number of Qur'anic ayat. In many passages the Qur'an calls for peace, compassion and forgiveness, and promotes moral values as moderation, humility, patience and tolerance whose scope could not be said to be confined to relations among Muslims alone. The Muslim jurists of the second hijrah century, as al-Zuhayli informs us, considered war as the norm, rather than the exception, in relations with non-Muslims, and were able to do so partly because of exaggeration in the application of naskh. The reason behind this was the need, then prevalent, to be in a state of constant readiness for battle to protect Islam. [53. Wahbah al-Zuhayli, Athar al-Harb, p.130.] The position of the classical jurists which characterised war as the permanent pattern of relationship with non-

[48] It would be hard to consider the change of qiblah, abrogation of bequest to relatives, the prohibition of visiting the graves, etc as historical, not juridical.

Muslims, as al-Zuhayli points out, is not supported by the alance of evidence in the Qur'an and Sunnah. [55. Al-Zuhayli, Athar al-Harb, p.135.]

It is therefore important, Abu Sulayman tells us, 'to put the concept of naskh back in proper context' and confine it to clear cases, such as the change of qiblah. As for the rest, the rules and teachings of Islam are valid and applicable in unlimited combinations as they meet the needs and benefits of mankind, in the light of the broader values and objectives that the Qur'an and Sunnah have upheld.[49] [56. cf. Abu Sulayman, The Islamic Theory, p. 107.]

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[49] The language used in this section about the earlier scholars is rather inaccurate. It is not conceivable that a few modern researchers would have the authority to condemn the multitudes of scholars of the past for their abuse of the concept of naskh. Even, if we agree that, sometimes, what was considered naskh is not, in fact, naskh. However, we should still have good thoughts of our righteous predecessors.